REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RASHDI CAMLIAN SAKALURAN,
(No. 485 U.N. Avenue, Ermita, Manila)
Accused.

CTA CRIM. CASE NO. O-411
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RASHDI CAMLIAN SAKALURAN,
(No. 485 U.N. Avenue, Ermita, Manila)
Accused.

CTA CRIM. CASE NO. O-412
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RASHDI CAMLIAN SAKALURAN,
(No. 485 U.N. Avenue, Ermita, Manila)
Accused.

CTA CRIM. CASE NO. O-413
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RASHDI CAMLIAN SAKALURAN,
(No. 485 U.N. Avenue, Ermita, Manila)
Accused.

CTA CRIM. CASE NO. O-414
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA,
BACORRO-VILLENA, *JJ.*

Promulgated:
SEP 16 2019
9:20 a.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Accused Rashdi Camlian Sakaluran is charged before this Court of the crime Failure to Supply Correct and Accurate Information in the Income Tax Return, in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for taxable years 2006, 2007, 2008 and 2009.

STATEMENT OF FACTS

On July 4, 2014, the prosecution filed before this Court four (4) separate Informations against the accused, which respectively read as follows:

CTA CRIMINAL CASE NO. O-411[1]

INFORMATION

[1] Docket, CTA Crim. Case No. O-411 (Vol. I), pp. 4-6.

The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **Rashdi Camlian Sakaluran** of the offense of willful failure to supply such correct and accurate information in his income tax return for taxable year 2008 in violation of Section 255, in relation to Section 248(B) of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about February 19, 2009 in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a taxpayer with Taxpayer Identification No. 160-248-645, being the proprietor of Rizmajell Money Changer, did then and there, willfully, unlawfully and feloniously fail to supply a correct and accurate information in his income tax return for taxable year 2008 by not declaring his sales and income derived from his gold sales transactions with the Bangko Sentral ng Pilipinas resulting in a substantial underdeclaration of his income/revenue and in his failure to pay the correct tax in the amount of **Pesos: Twenty-Four Million Eight Hundred Sixty-Nine Thousand Forty and 04/100 (₱24,869,040.04)**, exclusive of surcharges and interest amounting to **Pesos: Twenty-Two Million Nine Hundred Fifty-Nine Thousand Ninety-Seven and 76/100 (₱22,959,097.76)**, to the damage and prejudice of the Bureau of Internal Revenue.

CONTRARY TO LAW.

<u>CTA CRIMINAL CASE NO. O-412</u>[2]

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **Rashdi Camlian Sakaluran** of the offense of willful failure to supply such correct and accurate information in his income tax return for taxable year 2007 in violation of Section 255, in relation to

[2] Docket, CTA Crim. Case No. O-412, pp. 8-10.

Section 248(B) of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about March 25, 2008 in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a taxpayer with Taxpayer Identification No. 160-248-645, being the proprietor of Rizmajell Money Changer, did then and there, willfully, unlawfully and feloniously fail to supply a correct and accurate information in his income tax return for taxable year 2007 by not declaring his sales and income derived from his gold sales transactions with the Bangko Sentral ng Pilipinas resulting in a substantial underdeclaration of his income/revenue and in his failure to pay the correct tax in the amount of **Pesos: Forty-One Million Eight Hundred Eighty-Seven Thousand Three Hundred Eighteen and 02/100 (PhP41,887,318.02)**, exclusive of surcharges and interest amounting to **Pesos: Forty-Seven Million Forty-Seven Thousand Eight Hundred Thirty-Five and 60/100 (PhP47,047,835.60)**, to the damage and prejudice of the Bureau of Internal Revenue.
>
> CONTRARY TO LAW.

CTA CRIMINAL CASE NO. O-413[3]

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **Rashdi Camlian Sakaluran** of the offense of willful failure to supply such correct and accurate information in his income tax return for taxable year 2009 in violation of Section 255, in relation to Section 248(B) of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about February 18, 2010 in the City of Manila, and within the jurisdiction of this

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[3] Docket, CTA Crim. Case No. O-413, pp. 8-10.

> Honorable Court, the above-named accused, a taxpayer with Taxpayer Identification No. 160-248-645, being the proprietor of Rizmajell Money Changer, did then and there, willfully, unlawfully and feloniously fail to supply a correct and accurate information in his income tax return for taxable year 2009 by not declaring his sales and income derived from his gold sales transactions with the Bangko Sentral ng Pilipinas resulting in a substantial underdeclaration of his income/revenue and in his failure to pay the correct tax in the amount of **Pesos: Three Million Seven Hundred Fourteen Thousand Six Hundred Sixty-Seven and 95/100 (PhP3,714,667.95)**, exclusive of surcharges and interest amounting to **Pesos: Two Million Six Hundred Eighty-Six Thousand Four Hundred Forty-Seven and 86/100 (PhP2,686,447.86)**, to the damage and prejudice of the Bureau of Internal Revenue.
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> CONTRARY TO LAW.

CTA CRIMINAL CASE NO. O-414[4]

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **Rashdi Camlian Sakaluran** of the offense of willful failure to supply such correct and accurate information in his income tax return for taxable year 2006 in violation of Section 255, in relation to Section 248(B) of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about February 9, 2007 in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a taxpayer with Taxpayer Identification No. 160-248-645, being the proprietor of Rizmajell Money Changer, did then and there, willfully, unlawfully and feloniously fail to supply a correct and accurate information in his income tax return for taxable

[4] Docket, CTA Crim. Case No. O-414 (Vol. I), pp. 8-10.

> year 2006 by not declaring his sales and income derived from his gold sales transactions with the Bangko Sentral ng Pilipinas resulting in a substantial underdeclaration of his income/revenue and in his failure to pay the correct tax in the amount of **Pesos: Forty-Five Million Five Hundred Eighty-Nine Thousand Eight Hundred Ninety-Five and 18/100 (PhP45,589,895.18)**, exclusive of surcharges and interest amounting to **Pesos: Sixty Million Seven Hundred Thirty-Four Thousand Eight Hundred Fifty-Eight and 36/100 (PhP60,734,858.36)**, to the damage and prejudice of the Bureau of Internal Revenue.
>
> CONTRARY TO LAW.

Finding probable cause, this Court issued Warrants of Arrest against accused on July 17, 2014[5] for CTA Crim. Case No. O-413; on July 30, 2014[6] for CTA Crim. Case No. O-412; on August 28, 2014[7] for CTA Crim. Case No. O-411; and, on September 1, 2014[8] for CTA Crim. Case No. O-414. More so, the bail for his provisional liberty was set at Twenty Thousand Pesos (₱20,000) for each count.

On September 23, 2014, with the assistance of counsel de parte, accused voluntarily appeared before this Court and posted a cash bail bond for his provisional liberty in CTA Crim. Case No. O-411[9], CTA Crim. Case No. O-412[10], CTA Crim. Case No. O-413[11], and CTA Crim. Case No. O-414[12]. After approving and accepting the posted bail bond, the arraignment for the accused was set on October 22, 2014.

Meanwhile, on October 3[13] and 17[14], 2014, accused filed Motions to Consolidate the present criminal cases claiming that the

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5 Docket, CTA Crim. Case No. O-413, p. 531.
6 Docket, CTA Crim. Case No. O-412, p. 531.
7 Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1060-1061.
8 Docket, CTA Crim. Case No. O-414 (Vol. II), p. 1070.
9 Resolution dated September 25, 2014, Docket, CTA Crim. Case No. O-411 (Vol. II), p. 1076-1077.
10 Resolution dated September 24, 2014, Docket, CTA Crim. Case No. O-412, p. 540.
11 Resolution dated September 23, 2014, Docket, CTA Crim. Case No. O-413, p. 533.
12 Resolution dated September 25, 2014, Docket, CTA Crim. Case No. O-414 (Vol. II), pp. 1086-1087.
13 Docket, CTA Crim. Case No. O-412, pp. 541-545; and, Docket, CTA Crim. Case No. O-413, pp. 541-545.

cases involves the same parties and common questions of facts and/or laws. Finding merit thereon, this Court consolidated CTA Crim. Case Nos. O-412, O-413, and O-414 with CTA Crim. Case No. O-411, the case bearing the lowest docket number.[15] Also, the scheduled arraignment was cancelled and reset.

On November 26, 2014, accused was arraigned, duly assisted by his counsel *de parte*, and pleaded "NOT GUILTY" to the offenses charged against him.[16] After which, this Court set the preliminary conference on January 21, 2015 and the pre-trial conference on March 11, 2015.

On January 14, 2015, accused filed, through registered mail, a Motion for Leave of Court to Refer Documentary Evidence to an Independent Certified Public Accountant[17]. The Motion was initially denied[18] by this Court for accused's failure to abide by the rules governing availment of an Independent Certified Public Accountant (ICPA) in the presentation of voluminous documents or long accounts. However, after seeking reconsideration[19] thereof, this Court in the Resolution[20] dated April 28, 2015 eventually granted accused's Motion thereby commissioning[21] Mr. Enrico T. Pizarro, Founding Partner of ETP and Associates (formerly PMC Consultants and Partners, Co.), as the ICPA for the present consolidated cases.

In the meantime, preliminary conferences were held on January 21, 2015[22], February 11, 2015[23], March 18, 2015[24], April 8, 2015[25],

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[14] Omnibus Motion: (1) To Consolidate Cases and (2) Reset Arraignment, Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1083-1088; and, Docket, CTA Crim. Case No. O-414 (Vol. II), pp. 1088-1093.

[15] Resolution dated October 22, 2014, Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1092-1093; Resolution dated October 10, 2014, Docket, CTA Crim. Case No. O-412, p. 549; Resolution dated October 8, 2014, Docket, CTA Crim. Case No. O-413, pp. 546-547; and, Resolution dated October 22, 2014, Docket, CTA Crim. Case No. O-414 (Vol. II), pp. 1097-1098; CTA Crim. Case Nos. O-411 and O-414 were originally raffled to the CTA First Division, CTA Crim. Case No. O-412 to the CTA Third Division, and CTA Crim. Case No. O-413 to the CTA Second Division; In an Order dated September 26, 2018, these consolidated cases from the CTA First Division were transferred to the CTA Second Division pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court".

[16] Certificate of Arraignment, Docket, CTA Crim. Case No. O-411 (Vol. II), p. 1096; Resolution dated November 26, 2014, Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1110-1111.

[17] Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1149-1153.

[18] Resolution dated February 6, 2015, *id.*, pp. 1163-1165.

[19] Motion for Reconsideration (of the Resolution dated 06 February 2015), Docket, CTA Crim. Case No. O-411 (Vol. III), pp. 1219-1228.

[20] Docket, CTA Crim. Case No. O-411 (Vol. III), pp. 1346-1354.

[21] Resolution dated November 11, 2015, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 1940-1941.

[22] Minutes of Preliminary Conference dated January 21, 2015, Docket, CTA Crim. Case No. O-411 (Vol. II), pp. 1112-1119.

April 15, 2015[26], April 22, 2015[27], May 13, 2015[28], May 20, 2015[29], May 27, 2015[30], June 10, 2015[31], June 17, 2015[32], June 24, 2015[33], July 8, 2015[34], July 15, 2015[35], August 12, 2015[36], August 26, 2015[37], September 2, 2015[38], September 9, 2015[39], and September 16, 2015[40]. On the other hand, pre-trial conferences were held on October 7, 2015[41] and November 11, 2015[42].

Thereafter, accused filed his Pre-Trial Brief[43] on October 2, 2015 and Amended Pre-Trial Brief[44] on October 11, 2015, while the prosecution filed its Pre-Trial Brief[45] on October 5, 2015.

On November 26, 2015, the parties filed their Joint Stipulation of Facts and Issues[46] (JSFI), and then, on December 7, 2015, an Amended Joint Stipulation of Facts and Issues[47] was subsequently filed. In the Resolution[48] dated December 14, 2015, this Court approved the parties' JSFI and amended JSFI. Thus, on February 3, 2016, a Pre-Trial Order[49] was issued by this Court thereby deeming the pre-trial terminated.

During trial, the prosecution presented the following Bureau of Internal Revenue (BIR) personnel as witnesses, namely, Ms. Ma.

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23 Minutes of Preliminary Conference dated February 11, 2015, Docket, CTA Crim. Case No. O-411 (Vol. III), pp. 1166-1173.
24 Minutes of Preliminary Conference dated March 18, 2015, *id.*, pp. 1232-1237.
25 Minutes of Preliminary Conference dated April 8, 2015, *id.*, pp. 1275-1280.
26 Minutes of Preliminary Conference dated April 15, 2015, *id.*, pp. 1317-1325.
27 Minutes of Preliminary Conference dated April 22, 2015, *id.*, pp. 1332-1344.
28 Minutes of Preliminary Conference dated May13, 2015, *id.*, pp. 1372-1403.
29 Minutes of Preliminary Conference dated May 20, 2015, *id.*, pp. 1404-1425.
30 Minutes of Preliminary Conference dated May 27, 2015, *id.*, pp. 1426-1447.
31 Minutes of Preliminary Conference dated June 10, 2015, *id.*, pp. 1448-1469.
32 Minutes of Preliminary Conference dated June 17, 2015, *id.*, pp. 1470-1491.
33 Minutes of Preliminary Conference dated June 24, 2015, *id.*, pp. 1492-1513.
34 Minutes of Preliminary Conference dated July 8, 2015, *id.*, pp. 1514-1535.
35 Minutes of Preliminary Conference dated July 15, 2015, *id.*, pp. 1536-1559.
36 Minutes of Preliminary Conference dated August 12, 2015, *id.*, pp. 1568-1584.
37 Minutes of Preliminary Conference dated August 26, 2015, *id.*, pp. 1625-1637.
38 Minutes of Preliminary Conference dated September 2, 2015, *id.*, pp. 1708-1713.
39 Minutes of Preliminary Conference dated September 9, 2015, *id.*, pp. 1726-1731.
40 Minutes of Preliminary Conference dated September 16, 2015, *id.*, pp. 1749-1752.
41 Minutes of the Hearing dated October 7, 2015, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 1837-1840.
42 Minutes of the Hearing dated November 11, 2015, *id.*, pp. 1935-1937.
43 Docket, CTA Crim. Case No. O-411 (Vol. III), pp. 1778-1812.
44 Docket, CTA Crim. Case No. O-411, (Vol. IV), pp. 1888-1926.
45 *Id.*, pp. 1815-1834.
46 *Id.*, pp. 1943-1983.
47 *Id.*, pp. 1984-2037.
48 *Id.*, p. 2042.
49 *Id.*, pp. 2084-2142.

Gracia R. Bolutano, Ms. Josephine S. Virtucio, and Mr. Socrates O. Regala, who all testified on direct by way of judicial affidavits.

As to the prosecution's first witness, **Ms. Ma. Gracia R. Bolutano** is an Administrative Officer IV of the BIR, who is presently assigned as OIC-Administrative Section Chief of the Document Processing Division, Revenue Region (R.R.) No. 6, Manila. She previously served as OIC-Chief of the Document Processing Section (DPS) of Revenue District Office (RDO) No. 33, Intramuros from May 2, 2011 to May 5, 2014.

In her Judicial Affidavit[50], Ms. Bolutano testified that she encountered the accused when an access letter issued by the National Investigation Division (NID) requesting for the tax returns filed by the accused for taxable years 2005 to 2009 was forwarded to her. She alleged that her staff was able to retrieve the Income Tax Return (ITR) with its attachments filed by accused at RDO No. 33 for taxable years 2008[51] and 2009[52] and that she personally accessed the Returns Processing System (RPS) of Integrated Tax System (ITS) of the BIR for the computer extracted print-out copies of his ITRs for taxable years 2006 and 2007. She also contends that she examined the ITRs, made photocopies of them and forwarded them to the Revenue District Officer of RDO No. 33 in order that the ROs of the NID may be able to peruse said returns and print-outs.[53]

On cross-examination, Ms. Bolutano admitted that they do not have accused's physical returns for taxable years 2006 and 2007. She stated that only the physical copies of accused's ITR for taxable years 2008 and 2009 were in the records room of RDO No. 33.[54]

However, during her re-direct examination, Ms. Bolutano clarified that the BIR RDO only holds the physical copy of an ITR for six years after its filing and after which the returns are transmitted to the Administrative Division of the Region.[55]

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[50] Exhibits "P-201" and "P-201-1", Judicial Affidavit dated January 29, 2016, Docket, *id.*, pp. 2061-2067.
[51] Exhibit "P-192".
[52] Exhibit "P-193".
[53] Minutes of the Hearing dated February 3, 2016, Docket, CTA Crim. Case No. O-411, Vol. IV, pp. 2147-2149;
[54] Transcript of Stenographic Notes (TSN) dated February 3, 2016 and February 24, 2016, pp. 19-28 and pp. 15-29, respectively.
[55] TSN dated February 24, 2016, pp. 30-32.

On re-cross-examination, Ms. Bolutano admitted that at the time the access letter was forwarded to her, the physical returns for taxable years 2006 and 2007 were still in her office and not yet forwarded to the Administrative Division. She also stated that they did not forward the physical ITRs of the accused for taxable years 2006 and 2007 to the NID but only the extracted print-outs.[56]

The prosecution's second witness, **Ms. Josephine S. Virtucio**, is currently the OIC-Assistant Regional Director of R.R. No. 13 – Cebu City of the BIR since October 19, 2015. She previously served as Revenue District Officer of RDO No. 33 - Ermita/Intramuros/Malate of the BIR and RDO No. 43A - East Pasig.

In her Judicial Affidavit[57], she testified that when she was the Revenue District Officer of RDO No. 33, she received a letter from Atty. Sixto C. Dy, the OIC-Chief of the NID requesting for certified true copies of ITRs, VAT Returns, Expanded Withholding Tax with Alpha List of Employees, Withholding Tax on Compensation and all other returns filed by the accused for taxable years 2005 to 2009. She then instructed the DPS Chief, Ms. Ma. Gracia R. Bolutano, to verify if the accused filed any returns for taxable years 2005 to 2009.

Ms. Virtucio explained that in verifying filed tax returns, the Officer-in-Charge for verification will access the ITS of RDO No. 33, which is the database of the BIR containing all relevant information of taxpayers registered with the district. If a return was filed by a taxpayer, a data locator number (DLN) is assigned to the return filed for easy retrieval of the document from the storage room of the office. In case of withholding tax returns filed, computer print-outs of the withholding tax returns filed may be retrieved together with the relevant annexes filed by the taxpayer such as the alpha list of all the individuals subjected to withholding tax. These returns and print-outs, together with the annexes were presented to her.

She also testified that for taxable years 2005 to 2009, the accused filed ITR for taxable years 2005 to 2009 (BIR Form No. 1701), Monthly Percentage Tax Return (BIR Form No. 2551M) for taxable years 2005 to 2009, Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601E) for taxable years 2005 to 2009 and Monthly Remittance Return of *&*

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[56] *Id.,* pp. 33-35.
[57] Exhibits "P-202" and "P-202-1", Judicial Affidavit dated February 12, 2016, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2171-2178.

Income Taxes Withheld on Compensation (BIR Form No. 1601C) for taxable year 2009. Though, she stated that the physical returns retrieved were only the ITR for taxable years 2008 and 2009 while the rest are computer extracted printouts from the Integrated Tax System (ITS) of the BIR. Furthermore, Ms. Virtucio said that she wrote a letter[58] on May 31, 2011 addressed to the OIC-Chief of the NID, Atty. Sixto C. Dy, Jr., transmitting photocopies of all the returns filed by the accused including the computer print-outs of the income tax returns, expanded withholding, withholding tax on compensation and the monthly percentage tax, which were all certified by Ms. Ma.Gracia R. Bolutano.[59]

On cross-examination, Ms. Virtucio explained that if the physical documents are not found, it does not mean that they are lost. She claimed that the room of Ms. Bolutano is just a very small room containing the recent documents filed by taxpayer and if documents can no longer be filed within the room, they are forwarded to the Administrative Division, or to the warehouse. Also, in case they can no longer be accommodated in that room, they have another depository area on Anda Circle. She stated that since the ITRs for taxable years 2006 and 2007 were encoded and reflected in their ITS data base, their physical copies have been forwarded to the Administrative Division or store house or to the Anda Headquarters where returns are being filed. Ms. Virtucio explained that for 2006 and 2007, she asked Ms. Bolutano if she checked with the ITS and compare the printouts to what appeared in the screen and she gave her a positive answer. For taxable years 2008 and 2009, the physical returns were present and that these were among the documents that they forwarded. She also stated that she never saw the originals of the 2008 and 2009 returns.[60]

During her re-direct examination, Ms. Virtucio stated that during the years when she was still connected with Intramuros, they transmitted returns to the Anda Circle office. However, she claims that she just learned that after an earthquake struck Metro Manila, the place was no longer used for that purpose.[61]

When she was interpolated by this Court, Ms. Virtucio clarified that accused ITRs for taxable years 2006 and 2007 were extracted *jr*

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[58] Exhibit "P-195".
[59] Minutes of the Hearing dated February 24, 2016, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2205-2209.
[60] TSN dated February 24, 2016, pp. 48-54.
[61] *Id.,* p. 55.

from the data base of the BIR. She stated that there are safety measures in the return that would indicate that it is an official document extracted from the database such as the IP address of the computer used in accessing the file. That the entry D33MGRBO in the print out confirms that the access was made by Ms. Bolutano.[62]

Lastly, the prosecution's final witness, **Mr. Socrates O. Regala**, is currently the OIC-Revenue District Officer of the BIR assigned at RDO No. 27 – Caloocan City. Prior to that, he served as Chief Revenue Officer at the NID of the BIR from May 1, 2011 to October 11, 2015.

In his Judicial Affidavit[63], he testified that the case of the accused was assigned to his group through NID Memorandum of Assignment dated May 9, 2011 with the attached transmittal letter from the Bangko Sentral ng Pilipinas (BSP), the total gold and silver sale transaction and the Letters of Delivery and Sale (LDS). Mr. Regala said that as the Group Supervisor, he and his one member, Ms. Cristina Asuncion commenced the preliminary investigation on the possible tax violations of the accused.

Mr. Regala claims that they requested the authorized personnel of their division to access the BIR Integrated System to get the tax registration information of the accused and found out that he is a registered taxpayer at RDO No. 33-Ermita, with Tax Identification Number (TIN) 160-248-645-000 and with registered address at 485 UN Ave., Ermita, Manila. Accused is the sole proprietor of Rizmajell Money Changer. They then sent an access letter to RDO No. 33 to get hold of all the tax returns filed by the accused and an access letter to BSP- Zamboanga Branch to request for the certified true copies of the LDS.

According to Mr. Regala, in reply to their Access Letter, RDO Virtucio transmitted to them photocopies of accused's ITRs for 2008 and 2009 with attached financial statements, and computer extracted copies of his 2005 to 2007 ITRs, among others. They then compared the declared income of the accused per ITR filed with the BIR and the amount of income payments made by the BSP per certification and saw that there was substantial under-declaration of income in all the taxable years beginning 2006 to 2009 and there were no

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[62] *Id.*, pp. 56-58.
[63] Exhibits "P-203" and "P-203-1", Judicial Affidavit dated April 8, 2016, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2230-2242.

declarations of gold and silver transactions with the BSP in all taxable years involved. They computed for the exact percentage of under-declaration and the corresponding tax deficiencies per taxable year and evaluated the financial statements attached to the 2008 and 2009 ITRs which showed no reported income and expenses from selling of gold and silver to the BSP. With these, they recommended for the issuance of a Letter of Authority (LOA) and for the filing of the necessary criminal action against the accused under the Run After Tax Evaders (RATE) program of the BIR.

Thereafter, he stated that the Commissioner of Internal Revenue (CIR) issued to their group LOA No. LOA-211-2011-00000212[64] dated June 23, 2011. The CIR also approved the filing of a criminal case against the accused Rashdi C. Sakaluran through a letter[65] dated June 23, 2011 addressed to the Secretary of Justice referring for preliminary investigation and filing of an information in court if evidence so warrants. Thus, Mr. Regala and his team executed a Joint Complaint-Affidavit[66] against the accused.

Mr. Regala further testified that after filing a criminal case against the accused he served him the LOA with attached checklist of requirements. He explained that they filed a case against him on the same day that the LOA was issued and served because there were already violations of the NIRC committed by the accused as discovered during preliminary investigation. He repeatedly under-declared his income for four (4) consecutive years.

After service of the LOA, Mr. Regala said they received a letter dated June 28, 2011 from the accused asking for an extension to comply with the requirements for the examination of his book of accounts and an undertaking to make a partial submission on July 15, 2011. However, he claimed that the accused failed to appear before the BIR or submit anything. They issued three (3) more notices on three different occasions, a Second Request for Presentation of Records[67] dated August 12, 2011, a Final Notice[68] dated September 19, 2011 and a Notice for Informal Conference[69] (NIC) dated October 17, 2011. Then, on February 4, 2015, a Preliminary Assessment Notice (PAN) was issued against the accused. ℛ

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[64] Exhibit "P-186".
[65] Exhibit "P-1"; Exhibit "A-1".
[66] Exhibit "P-2"; Exhibit "A-2".
[67] Exhibit "P-187".
[68] Exhibit "P-188".
[69] Exhibit "P-189".

Subsequently, a Formal Letter of Demand (FLD) was issued on April 21, 2015. Mr. Regala also confirmed that he made the computation and the preparation of the issued PAN and FLD.[70]

During cross-examination, Mr. Regala admitted that they were never able to go over the originals of all the returns they got because they relied on the issuing district officer that the said returns were photocopies of the original documents as certified by the corresponding district officer. He said that for taxable years 2006 and 2007 they only have computer copies which states whatever taxable income or whatever the accused had filed in his returns during those years as exhibited in the computer print-outs.

Mr. Regala expounded that the usual procedure they perform when a case is assigned is to first make a preliminary investigation before recommending the filing of a criminal case. In the preliminary investigation, they weigh the information presented to them versus the ITR declared by the taxpayer and if there is a material difference, they recommend the case for prosecution.

Moreover, he testified that when they compared the LDS with the accused's ITR they did not consider the expenses of the accused as they were not indicated in his ITR and they are not allowed to presume what is not claimed by the taxpayer.

Mr. Regala also discussed Revenue Memorandum Order (RMO) No. 27-2010 which was issued in relation to the RATE program under which the instant cases were filed. He stated that after the case was reviewed by the Deputy Commissioner, the CIR issued an LOA the next day, including the letter to file a case in court. He alleged that he prepared a Memorandum of Request to justify the issuance of the LOA since an LOA will not be issued unless requested. He also explained that formal investigation of a case starts the moment it was referred to the examiner, and, if there is already a *prima facie* evidence, the LOA is then issued so just to deter the taxpayer from making any more changes by amending his ITR.

Perforce, Mr. Regala claims that there was already a *prima facie* evidence to file a RATE case against the accused when they filed the Joint Complaint Affidavit on June 23, 2011. Though he

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[70] Minutes of the Hearing dated April 13, 2016, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2289-2292;

admitted that the formal investigation against the accused was not finished when the complaint was filed, he reasoned, nonetheless, that it was already sufficient considering that they found the accused's failure to reflect whatever gold transaction he had in his ITR. As such, Mr. Regala confirmed that the formal investigation was deemed concluded the moment the FLD was issued.[71]

Meanwhile, on June 21, 2016, accused filed, through registered mail, a Notice to Take Deposition upon Written Interrogatories with Motion to Direct the Persons Authorized to Take the Deposition upon Written Interrogatories[72]. Accused prays that this Court issue an order directing any judge, notary public or any person authorized to administer oaths in Zamboanga City, Zamboanga Del Sur to take the said deposition.

In the Resolution[73] dated July 28, 2016, this Court denied accused's Notice explaining that the Modes of Discovery under Rule 23 to Rule 28 of the Rules of Court are intended only in civil cases. The more applicable provision in the present consolidated cases is Section 12[74] of Rule 119 of the Rules of Court, which unfortunately, accused failed to comply with.

On August 16, 2016, accused filed a Motion for Reconsideration (to the Resolution dated 28 July 2016)[75] but was, however, denied by this Court in the Resolution[76] dated October 14, 2016.

Then, on November 21, 2016, the prosecution filed its Formal Offer of Evidence[77], offering Exhibits "P-1" to "P-203-1", inclusive of sub-markings, as its documentary evidence. Consequently, in the Resolution[78] dated February 14, 2017, this Court admitted the

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[71] TSN dated April 13, 2016, pp. 11-38.
[72] Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2339-2367.
[73] Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2415-2418.
[74] **SEC. 12.** *Application for examination of witness for accused before trial.*— When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require.
[75] Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 2419-2433.
[76] Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2458-2459.
[77] *Id.*, pp. 2474-2567.
[78] *Id.*, pp. 2680-2682.

prosecution's exhibits, except for Exhibit "P-22", for failure of the exhibit formally offered to correspond with the document actually marked; and, Exhibits "P-190", "P-191", "P-194", "P-198", and "P-199", for prosecution's failure to present their originals for comparison. With the admission of the said exhibits, the prosecution is deemed to have rested its case.

When called to present his case, accused presented the following witnesses, namely, the court-commissioned ICPA Enrico T. Pizarro; accused himself, Rashdi Camlian Sakaluran; accused's CPA Atty. Clifford Chua; Deputy Director Marites F. Encina of the Financial Services Group, Office of the Assistant Governor-Security Plant Complex of the BSP; Bank Officer II and Acting Assistant Manager Marietta C. Akol of the Office of the General Counsel of the BSP; Mr. Abdullatip Hajallaji and Mr. Noel Delos Reyes, accused's gold brokers, smelter and refiner; and, former BSP Administrative Officer Melodino Patiño, who all testified on direct by way of judicial affidavits.

Mr. Enrico T. Pizarro was appointed to serve as the ICPA in the present cases pursuant to Rule 12 of the Revised Rules of Court of Tax Appeals (RRCTA). In his Judicial Affidavit[79], the ICPA explained that he was tasked to render an audit opinion in connection with the tax assessment cases filed against the accused for taxable years 2006, 2007, 2008, and 2009. He noted that the PAN and FLD were served on the accused after the filing of the criminal charges against him. Moreover, the ICPA said that using the matching of costs with revenues, he noticed that the accused incurred significant costs associated with the trading sale transactions or the "cost of sales" with its gold transactions with the BSP. This means, the accused did not make profit on his gold transactions with BSP since the expenses he incurred were greater than his income. These are the findings for the accused's gold transactions with the BSP for taxable years 2006, 2007, 2008, and 2009.

The ICPA further testified that considering the accused incurred taxable losses for the years 2006, 2007, 2008, and 2009, there were no income taxes due for the said years. He said that the losses incurred by the accused for all four (4) years were greater than his income thus entitling him to carry over the loss in excess of his income as a deduction to his income for the next three (3)

[79] Exhibit "A-362"; Judicial Affidavit dated June 30, 2017, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2729-2737.

succeeding years in accordance with Section 34(D)(3) of the NIRC of 1997, as amended.

More so, the ICPA claimed that the State did not use the same standards in its assessment of the accused's taxable income. In assessing the accused for deficiency income taxes, the State merely computed accused's deficiency income tax based on the net payments made by the BSP to the accused and deducting only the accused's personal exemption. He said these computations were incorrect since it failed to consider the cost of sales for these gold transactions.

For 2006, the accused was assessed in the amount of ₱106,324,750.54 for the total payments made by BSP for his gold transactions in the amount of ₱142,567,108.93. He claimed that the total payments made by BSP for his gold transactions should be deducted by the cost of sale in the total amount of ₱153,668,829.46. Clearly then, accused incurred a Net Operating Loss of ₱11,101,730.53 in 2006, which can be carried over as a deduction from the accused's gross income for the next three (3) years or until 2009.

As for 2007, accused was assessed in the amount of ₱88,935,153.62 for the total payments made by BSP for his gold transactions in the amount of ₱130,983,075.30. However, the assessment failed to consider accused's cost of sales, which the ICPA computed in the total amount of ₱140,078,897.12. Clearly, accused incurred a Net Operating Loss of ₱9,095,821.82, which can also be carried over as a deduction from accused's gross income for the next three (3) years or until 2010.

For 2008, accused was assessed in the amount of ₱47,828,137.80 for the total payments made by BSP for his gold transactions in the amount of ₱77,799,438.24. Again, the assessment failed to consider accused's cost of sales for gold transactions with the BSP in the amount of ₱77,954.583.55. Thus, the accused incurred a Net Operating Loss of ₱55,245.31. Further, taking into account accused's other income and allowable deductions, his total loss for 2008 is ₱18,555.31, which he is once more allowed to claim as Net Operating Loss Carry Over for the next three (3) years or until 2011.

Lastly, as for 2009, accused was assessed in the amount of ₱6,401,115.81 for the total payments made by BSP for his gold transactions in the amount of ₱11,681,799.34. The assessment once again failed to consider accused's cost of sales for gold transactions with the BSP in the total amount of ₱11,646,391.42. As such, accused incurred a Net Operating Loss of ₱35,407.92 for his gold transactions with the BSP, considering accused's other income and allowable deductions, his gross taxable income for 2009 is ₱91,245.92. Taking into account the allowable Net Operating Loss Carry Over from 2006, accused has no taxable income for 2009.[80]

During his cross-examination, the ICPA testified that in making his report, he examined documents from the BSP such as Letter of Deliveries. He explained that in using the matching of cost procedure, the bases used for the cost of accused's transactions are, the Letter of Deliveries from the BSP, the quantity transacted, and the relative cost published by the BSP during the time it was transacted so that it matches the sale.

The ICPA also admitted that both revenues and costs of the gold transactions with the BSP were not declared in the accused's ITR; that the NIRC of 1997 provides that ordinary and necessary expenses shall be allowed as deduction for income purposes; and that under the substantiation rule of the BIR, the said expenses must be supported by official receipts or invoices, or any other documents.[81]

When interpolated by this Court, the ICPA confirmed that accused only received the PAN and FLD after the criminal charges against him were filed. The ICPA also testified that there is a paragraph in the PAN and FLD informing the accused that a 50% surcharge will be imposed for willful neglect to file the ITR within the period prescribed by the law and for the omission of certain transactions in the tax return filed.[82]

Herein accused, **Mr. Rashdi Camlian Sakaluran**, testified via Judicial Affidavit[83] that his gold trading transactions with BSP took

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[80] Minutes of the Hearing dated July 5, 2017, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2740-2744.
[81] TSN dated July 5, 2017, pp. 19-25.
[82] *Id.*, pp. 26-33.
[83] Exhibit "A-364"; Amended Judicial Affidavit, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2800-2816.

place in Zamboanga City where he currently resides. Though he claims that he previously had a money changing business in Manila, which he registered with the BIR in 1993, he nonetheless gave it up to his younger sister when he started having marital troubles with his wife and eventually decided to go back to Zamboanga City together with his three kids.

Thereafter, accused states that his father and cousin encouraged him to enter into the business of selling gold to the BSP after moving back to Zamboanga City. He started his business with a capital of ₱300,000.00, given by his parents, which he used to purchase gold from pawnshop owners and in turn sold it to the BSP. Accused divulged that the pawnshop owners gave him special accommodation by giving him a credit line or character loan because of his father's surname. The pawnshop owners would allow him to purchase up to ₱1,000,000.00 worth of gold by depositing only ₱300,000.00 and then paying the remaining balance only after receiving payment from the BSP.

Accused said that after buying ₱1,000,000.00 worth of gold, which is roughly 600 grams of gold, he will have it processed to transform these jewelries into refined gold of 24 karats which commands a greater price when sold to BSP. He employed 3 to 4 people to do the overnight work for ₱10,000.00, but he provided for the materials they needed in the smelting process, like metric acid, clay pot, copper, borax, petroleum, and silver. He said that for ₱1,000,000.00 worth of gold, he would spend ₱6,000.00 for the materials.

Accused further explained that after the gold is refined, he brings it to the BSP for evaluation. After the gold bars are weighed and assessed, the BSP will pay him ninety-five percent (95%) of the total price of gold through checks; this is determined by the price of gold in the world market and the US dollar rate for the day. The remaining five percent (5%) will be given after forty-five (45) days. The 45-day period is given because the refined gold sold in Zamboanga City will be transferred by the BSP to its main office here in Metro Manila for final assay in the central office.

After receiving payment from the BSP, accused brings the check to the encashment division of the BSP and then go directly to the pawnshop owners to pay-off his remaining balance.

More so, accused claims that for a ₱1,000,000.00 worth of gold sold at ₱1,800.00 per grams, he would sell it to the BSP for ₱1,825.00 per grams, which would earn him between ₱15,000 to ₱25,000.00. However, after paying the cost of labor in the amount of ₱10,000.00 and materials used in the amount of ₱6,000.00, the amount left after deducting said expenses is only ₱9,000.00.

He said that he does this transaction in a weekly basis but his earnings are not consistent since like all other businesses, there are lean months in gold trading, between May to October. During these periods, he conducts gold trading transactions once a month or once in every two months.

Accused also explains that he stopped his gold transaction business in mid-2010 because he was already losing money. He claims that he although gaining the amount of ₱9,000.00 per week during peak season. It soon slowed down due to frequent losses and because his laborers were getting sick due to the chemicals they were exposed to in the process of smelting. He said that in the long run the ₱300,000.00 seed money he used as capital dwindled.

Furthermore, accused admits that from 2006 to 2009, when he transacted gold with the BSP, he did not pay taxes to the BIR because he was made to understand by the BSP officers that his gold transactions with the BSP were tax exempt. In fact, he claims that Ms. Nieves Lozada, then Head of the Gold Buying Station of BSP Zamboanga City relayed to him, as well as with the other gold traders, that their transactions with the BSP were tax exempt.

Accused also testified that Ms. Lozada's statement made him more comfortable entering into transactions with the BSP. As a layman, he sincerely relied on Ms. Lozada's confirmation and believed in good faith that the sale of gold was tax exempt. He claimed that the BSP, being a reputable government agency, would have the authority to disseminate and confirm such information since it was directly transacting with the gold traders.

He further avers that he also inquired with other gold traders whether their transactions with the BSP were tax-exempt. Accused alleges that the other gold sellers mentioned that they likewise did not include the income from the sale of gold in their ITR because of the advice by the BSP that the sale of gold to BSP is subject to zero-rated and therefore means they are tax exempted.

In view of this, accused claims that this is the primary reason he entered into gold transactions with the BSP. He alleged that he would have not entered into gold sales transactions with the BSP had he known they were not tax exempt. This is mainly because gold traders earn little profit or most of the time only breaks even considering the high acquisition cost of gold. Subjecting gold trading transactions to taxes would mean that traders would be incurring losses on the said transactions which he admits he would not enter into in the first place.

Furthermore, accused also testified that he did not willfully neglected to file his ITR. He explains that his sister being the proprietor of the money changing store was the one who in fact filed the ITRs for taxable years 2006, 2007, 2008 and 2009. He said that even though the returns were filed under his name and tax identification number, it was his sister through her accountant who filed the ITRs that the BIR were referring to, as evidenced by his sister's signatures on the said returns.

As a matter of fact, accused claims that on June 23, 2011, he learned that a case was filed against him before the DOJ and was shocked after knowing that it was related to his gold transactions with the BSP which only generate small income and not multi-million transactions as mentioned in the news. This left him confused why he was being sued for tax evasion when the BSP guaranteed that gold trading transactions with them are exempted from tax.

The next day, accused was informed by his sister that an LOA was handed to her by her staff in the money changing store. He claims that he wrote the BIR requesting for ample time to produce the documents they were asking for and instructed his sister to coordinate with her accountant for the said documents. After which, he did not hear from the BIR anymore.

Accused then claims that after the LOA incident, he no longer received documents from the BIR except for a Warrant of Distraint and Levy recently received by his sister which states that the BIR is authorized to seize the properties in the name of the accused. Accused insists that he has no properties since he has lived with his parents ever since – he does not have his own house, any land or any vehicle. He said that his parents supported him and his kids with everything.

Moreover, accused asserts that he only learned that a PAN was issued to him by the BIR when it was mentioned in one of the hearings, and when used as reference by his accountant.

Accused further said that he is upset with the BSP since he relied on their representation that gold trading with them is tax-exempt which later turned out to be false. He alleged that he is being made to suffer for the BSP's mistake. He likewise claims that he was used by the pawnshops owners to dispose their gold, that instead of them doing the smelting and trading in their own names as sellers in the records of the BSP, it turned out to be his name.

Lastly, accused assserts that the BSP only started withholding income taxes on gold sales transactions sometime in 2012. He said that the BSP website now stated that excise tax and five percent (5%) creditable withholding tax are withheld for every payment for gold. However, prior to 2012, the BSP website did not mention that there was withholding taxes on its gold sales transactions.

During his cross-examination, accused said that he employed Mr. Noel Delos Reyes, Hajallaji, Haji Muinyusup, and Salum Adjadi for the smelting process. He said that he does not have receipts of the materials used in the smelting process because in Zamboanga where they bought the said materials, official receipts were not customarily issued by the merchants. The same goes with the pawnshops owners to which he paid the remaining balance.

In the same vein, accused claims that when he received the payments from the BSP, he did not issue receipts to the BSP. He explained that it is also one of the reasons why he was confident that doing gold trading transactions with the BSP is tax exempt because he was not asked to issue any receipt and produce other BIR requirements. Otherwise, he could have registered his business and apply for authority to print the receipt.[84]

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[84] TSN dated September 13, 2017, pp. 21-23.

During the interpolation by this Court, the accused admitted that it was not only the pawnshops owners who sell him gold.[85]

Atty. Clifford E. Chua, is a CPA privately engaged by the accused in 2015 to verify, compile and reconstruct his accounting records and books of accounts in relation to his gold trading transactions with the BSP. In his Judicial Affidavit[86], he testified that he reconstructed accused's accounting records to present a comprehensive accounting report of his gold sales transactions with the BSP including the costs related to the sales. He stated that the reconstruction of accused's gold transactions was based on documents from third parties that were provided to him as well as those derived from the BSP records to support the quantity and price of accused's trading transactions with the BSP.

In his report, Atty. Chua made a summary of accused's trading sales transactions with the BSP for the years 2006, 2007, 2008, and 2009. A comparison and verification of the amounts presented were made in the summary of the daily trading sales and transactions of accused, in relation to the published rates of selling gold per *troy* ounce to grams and per dollar, including the Peso-to-Dollar exchange rates. More so, a summary of the trading costs and the corresponding gross profit or loss associated with the sales transactions using the formula as shown below was also presented, to wit:

Computation of the total selling price of transactions per trading day using the industry standard formula

Selling price per gram =	Per Troy Oz. Price of Gold In USD x USD Exchange rate x Conversion of Troy Oz. to Grams x Net Impurity x Assay) – Refining Charges
Industry standard constant variables in the formula:	
a. Net Impurity =	0.990
a. Assay =	0.997
a. Conversion of troy oz. to grams =	31.1035
a. Refining charge =	1.10

[85] *Id.*, p. 24.
[86] Exhibit "A-363"; Judicial Affidavit dated August 3, 2017, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2772-2779.

Atty. Chua further claims that by using the same formula which the BSP used in computing the price of the gold sold to accused, he was able to compute the cost of sales or the costs associated to the sale of gold by accused to the BSP simply by determining the cost of sales through standard industry practice called the matching principle. Thus, as shown below in his report, during the period 2006 to 2009, accused indeed suffered losses in his gold transactions with the BSP. Specifically, a loss of ₱11,101,720.53 in 2006, ₱9,095,821.82 in 2007, ₱55,145.31 in 2008, and ₱35,407.92 in 2009, *viz.*:

Summary of Mr. Rashdi Camlian Sakaluran's gross profit (loss) on his BSP sales transactions for 2006 to 2009

Year	Trading Sales	Trading Cost	Gross Profit (loss)
2006	142,567,208.93	153,668,829.46	(11,101,720.53)
2007	130,983,075.30	140,078,897.12	(9,095,821.82)
2008	77,799,438.24	77,854,583.55	(55,145.31)
2009	11,681,799.34	11,646,391.42	(35,407.92)
TOTAL	363,031,421.81	383,248,701.55	(20,217,279.74)

Atty. Chua explains that accused incurred losses due to the fact that the costs associated with the sale transactions exceeded the income that accused derived from his transactions with the BSP. More so, Atty. Chua elucidates that a businessman would still continue conducting his business despite experiencing continuous losses since loss experienced at the start of the business is usually normal. As seen in the report, accused income in 2009 was already being realized and his trading losses in 2008 and 2009 were becoming minimal.

Summary of Mr. Rashdi Camlian Sakaluran's total income (loss) for taxable years 2006 to 2009

Year	Income (Loss) from BSP	Income Declared in Return	Total Income (Loss)
2006	(11,101,720.53)	374,133.00	(10,727,587.53)
2007	(9,095,821.82)	385,185.00	(8,720,636.82)
2008	(55,145.31)	397,871.00	342,725.69
2009	35,407.92	461,706.00	497,113.92
TOTAL	(20,217,279.74)	1,618,895.00	(18,598,384.74)

When cross-examined, Atty. Chua admitted that in reconstructing accused's accounting records, there were no official receipts approved by the BIR, however, there were some receipts but they are just paper, that's why he mostly based his reconstruction on the ones given by the BSP. He also admitted that for cost to be attributed, the NIRC requires that there should be approved receipts, invoices or receipts but not for accounting purposes.

Moreover, Atty. Chua testified that he did not apply the Optional Standard Deduction under the NIRC because it was not opted to by the taxpayer. He said that he did not know the accused personally but based on the records during 2006 and the succeeding years, accused has money to afford losses and to continue operating his business.[87]

Deputy Director Marites F. Encina of the Financial Services Group, Office of the Assistant Governor-Security Plant Complex of the BSP, was the then Assistant Manager of the Financial Services Group of the BSP in July 2007. In her Judicial Affidavit[88], she explains that the Financial Services Group did not receive any instruction to implement any change in the on-going payment processing of gold payments in spite of the issuance of BSP Memorandum[89] dated July 9, 2007. She said that the BSP started the collection of taxes on gold transactions only on July 2011 since it was only then that she was given instructions by either the Manager or the Deputy Director to implement the same though she had however no knowledge as to the official basis of the instruction. Lastly, she testified that she has no personal knowledge if whether the information was disseminated to the public.

Acting **Assistant Manager Marietta C. Akol**, is also a Bank Officer II at the Office of the General Counsel of the BSP since March 23, 2015. In her Judicial Affidavit[90], she identified the BSP Memorandum dated July 9, 2007 issued by the Office of the General Counsel to the Officer-in-Charge of the Office of the Managing Director, Security Plant Complex which she had stamped certified photocopy of the records. She stated that the subject of the

[87] TSN dated August 9, 2017, pp. 15-17.
[88] Exhibits "A-368" and "A-368-A", Judicial Affidavit dated January 10, 2018, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2913-2919.
[89] Exhibit "A-367".
[90] Exhibit "A-369"; Judicial Affidavit, docket, CTA Crim. Case No. O-411 (vol. V), pp. 2920-2926.

Memorandum is the withholding of percentage and income tax on BSP purchase of gold and silver. Lastly, the witness claims that as custodian of the records of the Office of the General Counsel and Legal Services, she was however not aware if there was any action taken by the Officer-in-Charge of the Security Plant Complex who was the addressee in the Memorandum.

Mr. Abdullatip Hajallaji, testified in his Judicial Affidavit[91] that from 2006 to 2009 he worked as a broker, a smelter, and a refiner of gold for the accused in Zamboanga City. He said that during that time, accused paid him in commission, including meal and transportation allowance, for his brokering, smelting, and refining services. He testified that accused reimbursed him for money spent on materials used for the smelting and refining process which are kerosene, borax and nitric acid.

Mr. Hajallaji testified that from 2006 to 2009, though not sure of the exact amount he received as commission, accused usually pay brokers the commission of 0.05% of the value of the gold that accused purchased. He explains that accused pays him the average of ₱2,000.00 to ₱8,000.00 each time he rendered smelting and refining services for him. He approximately received from accused the amounts of ₱157,500.00 in 2006, ₱180,000.00 in 2007, ₱145,000.00 in 2008, and ₱30,000.00 in 2009 for his smelting and refining services. Likewise, he claims that accused reimbursed him approximately ₱15,000.00 in 2006, ₱18,000.00 in 2007, ₱21,500.00 in 2008, and ₱3,250.00 in 2009 for transportation and meal allowances; and, approximately ₱216,647.50 on the materials he bought and used to smelt and refine the gold jewelries for accused. Lastly, he claimed that accused told him that he was selling the gold to the BSP and that the latter requires the gold to be in certain form before purchasing, hence the reason for the smelting and refining of the gold.

During this Court's interpolation, Mr. Hajallaji stated that he is not an employee of the accused or a businessman. He claimed that he is an unlicensed broker because his job is not full time.[92]

Likewise, **Mr. Noel Delos Reyes**, in his Judicial Affidavit[93], testified that from 2006 to 2009, he was also accused's broker,

[91] Exhibit "A-370"; Judicial Affidavit dated February 28, 2018, *Id.,* pp. 2990-2998.
[92] TSN dated March 14, 2018, pp. 22-24.

smelter, and refiner of gold. He claims that accused bought from him approximately 21,520 grams of gold jewelry in 2006 and another 13,662 grams in 2008. He continues that he received a commission of 0.05% of the value of the gold sold which is in the amount of ₱10,726.75 in 2006 and ₱6,790.66 in 2008. The witness also claims that accused informed him that he was in the business of selling gold to the BSP.

During cross-examination, Mr. Delos Reyes explained that a gold broker is the middleman in a gold transaction of other people, such as herein accused. He facilitates and arranges settlement between the buyer and seller so that an agreement can be reached. Accused is usually the buyer to whom he worked as broker and also smelted and refined gold for the years 2006 to 2007. He claims that accused sometimes pays him for the smelting, but most of the time, it is on commission based on the percentage of the sale of gold. He also states that he does smelting and refining of gold for the accused so he can gain experience therefrom.[94]

During re-direct examination, Mr. Delos Reyes testified that when acting as a middleman for accused and a potential seller, the payment for the gold is sometimes given to him by accused and other times he let accused and the seller meet so that they can agree to change the payment, as long as he gets his percentage commission on the transaction.[95]

When interpolated by this Court, Mr. Delos Reyes stated that he knew the accused's other witness, Mr. Hajallaji because of their work. He said that they executed their Affidavits on September 2, 2011 before the same lawyer.[96]

Mr. Melodino Patiño, has been working as an Administrative Officer at the BSP for at least 35 years when he met the accused. In his Judicial Affidavit[97], he explained that as an Administrative Officer, he directly participates in the Gold Buying Program of the BSP, from assessment of gold to the final payment to the gold trader. He observes the cleaning and weighing of gold brought before their

[93] Exhibit "A-371", Judicial Affidavit dated February 28, 2018, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2980-2986.
[94] TSN dated March 14, 2018, pp. 35-42.
[95] *Id.*, pp. 42-43.
[96] *Id.*, pp. 44-52.
[97] Exhibit "A-372"; Judicial Affidavit dated March 8, 2018, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 3018-3026.

office, and he is also one of the signatories on the check issued as payment thereof. He further stated that before signing the checks, he reviews and rechecks the computation prepared by the Gold Buying Station. Thereafter, when he later became the Branch Head, he became the approving officer for gold transactions in the Branch.

Mr. Patiño explained the BSP procedure for the Gold Buying Program. He clarified that the said program of the BSP is about purchasing gold from the market to boost the country's international gold reserve. Adequate international reserve creates an impressive credit rating for the country. He further elucidated that when a country's credit rating is good, it can borrow at a very low interest rate. The exchange rate between our peso and other foreign currencies like USD is also affected by the level of international reserve.

He testified that to encourage traders to sell gold to the BSP, the office promoted tax-free transactions and the "no questions asked" policy. Gold traders can simply bring gold in a specified form to BSP branches and they will be paid accordingly without further need of presenting requirements and payment of taxes. Mr. Patiño continues that the BSP advised the gold traders that the gold transactions were tax free as a way to encourage the gold traders to sell to them. He claims that he had no reason to doubt the implementation of the tax-free treatment of gold transactions since the BSP is within its mandate to pursue the increase of gold reserves because what may appear to be any loss in taxes thereto, translates to a bigger gain for the country as it results in an improvement of the country's credit rating.

Mr. Patiño also clarified that the implementation of the tax-free treatment of gold transactions was based on instructions from the head office that there will be no taxes on the transactions and the no questions policy was to be implemented. The fact that there were no additional instructions to withhold taxes supported the fact that the gold transactions were indeed tax free.

Moreover, he stated that the BSP did not require gold traders to register their business or issue receipts to the BSP because it is included in the implementation of the "no questions asked" policy. Mr. Patiño even claims that gold traders could have given the BSP a fictitious name at the time of transaction, and the BSP would still buy the gold from them. However, since the filing of the present cases and other similar cases against gold traders, the BSP now requires gold traders on an annual basis, to accomplish the Customer Information Packet and to signify conformance with the BSP Responsible Gold Sourcing Policy. Thus, gold sellers, small-scale miners/traders/panners, and their representative/s, if any, are now required to submit to the BSP gold buying station photocopies of their government issued ID and TIN. With regard to taxes, Mr. Patiño explained that while the past gold transactions were considered tax-free, the BSP now only implements tax deductions of 2% excise tax and 5% creditable withholding tax.

Mr. Patiño further testified that prior to the filing of the present cases, he was not aware that taxes were due on the gold trading transactions. He said that the gold buying program of the BSP has been going on for over twenty (20) years and they were always made aware that the transactions are tax-free to encourage traders to sell to the BSP. In fact, like the gold traders, BSP branches were duly informed that gold transactions were indeed tax free based on instructions of the BSP head office. Accordingly, no taxes were withheld on the gold trading transactions between the BSP and the gold traders, and should, in any case, there be taxes due on the transactions, the BSP meant to shoulder the costs pursuant to their mandate to increase the country's international gold reserve.

Mr. Patiño also clarified the reason why he decided to testify in favor of the accused, that he knew that the BSP informed the gold traders that the gold trading transactions were tax free. He claims that it is not fair for the accused and other gold traders to go to jail because it was not their fault that they relied on the guarantee that gold trading transactions with the BSP are tax exempt.

During cross-examination, Mr. Patiño propounds that payments to gold traders are made through issuance of checks which they then encash in their preferred banks.

Further, Mr. Patiño admits that he was only verbally informed of the tax-free gold buying transactions and of the no question policy as well by a certain Mr. Cesar Balag. Mr. Patiño also claims that the no question policy is in support of the no tax policy of the BSP. This is to convince the traders that they should not worry about the taxes because the BSP has no interest about their identity.

Mr. Patiño likewise reveals that before the gold buying station of the BSP Zamboanga City branch opened, the different BSP branches in the Davao Region Office were already in the business of buying gold and they just merely followed the procedure undertaken by the said branches. He explained that when their gold buying station were about to open, they sent employees to the Davao branch to look at their operation and even copied all the forms needed in the sale. On the other hand, some were sent to the MROD in Manila to know how gold is being refined and assay.

However, Mr. Patiño clarifies that he was not among those sent because at that time he was an Administrative Officer and gold traders go to him as he is one of the checks' counter-signatories and he also has to witness the weighing of the gold.

Lastly, Mr. Patiño claims that there are BSP gold buying stations all over the country, and that the stations in Naga, Davao and Zamboanga inform the gold traders of the tax-free status of gold trading transactions and that the *no question asked* BSP policy.

During this Court's interpolation, Mr. Patiño clarified that there was no collection of withholding tax on gold transactions until 2009. He also did not know if there was any case filed against the BSP by the BIR or the DOJ. Mr. Patiño also said that the documents for their gold trading transactions are complete as there are vouchers, check vouchers, computation of the gold attached to the checks prepared, and entries made in relation to each transaction. These are then transmitted to BSP head office, though a copy is also furnished to the Davao Regional Office.[98]

Thereafter, on April 18, 2018, accused filed his Formal Offer of Evidence[99], offering Exhibits "A-1" to "A-372", inclusive of sub markings, as documentary evidence. In the Resolution[100] dated August 15, 2018, this Court admitted most of accused's exhibits. The exhibits denied were Exhibits "A-187 to A-203", "A-205 to A-211", "A-219 to A-224", "A-226 to A-236", "A-187-A to A-203-A", "A-205-A to A-211-A", "A-219-A to A-224-A", "A-226-A to A-236-A", "A-237", "A-237-B", "A-237-A", "A-237-C", "A-237-D", "A-238", "A-238-B", "A-238-A", "A-238-C", "A-238-D", "A-239", "A-239-B", "A-239-A", "A-239-C", "A-239-D", "A-240", "A-240-B", "A-240-A", "A-240-C", "A- *gc*

98 *Id.*, pp. 71-78.
99 Docket, CTA Crim. Case No. O-411 (Vol. VI), pp. 3069-3089.
100 Docket, CTA Crim. Case No. O-411 (Vol. VII), pp. 4027-4029.

240-D", "A-242", "A-242-A", "A-243", "A-243-B", "A-261 to A-267", "A-270 to A-326", and "A-327", for failure to identify the exhibits; Exhibits "A-268", "A-269", and "A-330", for failure to present the originals for comparison and for failure to identify the exhibits; and Exhibits "A-365" and "A-366", for failure to present the originals for comparison.

On October 1, 2018, accused filed an Omnibus Motion: 1) To Admit Excluded Evidence; and, 2) To Hold in Abeyance the Submission of Accused's Memorandum [101], and thereafter, an Addendum to Omnibus Motion 1) To Admit Excluded Evidence; and 2) to Hold in Abeyance the Submission of Accused's Memorandum dated 01 October 2018 [102] was later filed on January 25, 2019. However, accused's Motion and Addendum were denied by this Court in the Resolution[103] dated February 27, 2019. Thus, as previously scheduled, the parties were given a period of twenty (20) days within which to submit their respective memoranda. Thereafter, the present cases shall be deemed submitted for decision.

Meanwhile, accused filed on March 20, 2019 a Motion for Reconsideration [104] but it was, however, again denied in the Resolution[105] dated June 14, 2019.

Accused then filed on March 19, 2019, a Motion for Leave of Court to Admit the Attached Memorandum Ad Cautelam[106] which was granted by this Court in the Resolution[107] dated March 22, 2019. Thus, the attached Memorandum Ad Cautelam For Accused[108] was deemed admitted.

On April 5, 2019, the Memorandum (For the Plaintiff)[109] was filed. Accused, on the other hand, filed a Supplement to the Memorandum Ad Cautelam[110] on June 21, 2019. *gc*

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[101] *Id.*, pp. 4037-4044.
[102] *Id.*, pp. 4054-4060.
[103] *Id.*, pp. 4131-4139.
[104] *Id.*, pp. 4196-4207.
[105] *Id.*, pp. 4253-4255.
[106] *Id.*, pp. 4141-4147.
[107] *Id.*, p. 4195.
[108] *Id.*, pp. 4148-4192.
[109] *Id.*, pp. 4231-4245.
[110] *Id.*, pp. 4256-4263.

Accordingly, in the Resolution[111] dated June 27, 2019, the present consolidated cases were submitted anew for decision.

STATEMENT OF THE ISSUES

The following issues[112] were stipulated by the parties for this Court's resolution, *viz.*:

1. Whether the Accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, for taxable year 2006;

2. Whether the Accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, for taxable year 2007;

3. Whether the Accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, for taxable year 2008; and

4. Whether the Accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, for taxable year 2009.

ARGUMENTS FOR THE PLAINTIFF

The prosecution primarily claims that accused, as the sole proprietor of Rizmajell Money Changer/Shed Money Changer and as also engaged in the business of selling gold and silver to the BSP, is required to declare all his income/receipts in his annual ITR for taxable years 2006 to 2009. In doing so, it is the obligation of the accused to supply correct and accurate information in his ITRs. However, based on records, accused willfully, unlawfully, and feloniously failed to supply correct and accurate information in his ITRs for taxable years 2006 to 2009.

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[111] *Id.*, pp. 4265.
[112] Par. 2, Amended JSFI, Docket, CTA Crim. Case No. O-411 (Vol. IV), pp. 1985-1986.

COUNTER-ARGUMENTS FOR THE ACCUSED

Conversely, accused insists that his acts were justified and made in good faith considering that he only relied on the representations made by the BSP that his gold and silver sales transactions with them were tax-free. He explains that the BSP, through its website and publicly distributed leaflets, directly and expressly represented to the public, including accused, that its gold and silver buying program were truly tax-free. Nonetheless, accused avers that it was the BSP that failed to withhold taxes on their gold sales transactions with the accused despite being aware of its duty as a withholding agent as clarified by their own general counsel in a Memorandum Circular dated July 9, 2007.

Accused states that he cannot be criminally liable for violation of Section 255 of the NIRC, as amended, considering that no actual fraud, an element essential to tax fraud cases, can be imputed against him.

Furthermore, accused argues that the BIR's computation of his alleged tax liability is arbitrary and grossly incorrect considering that the BIR failed to deduct the costs and expenses he incurred for his gold and silver sales transaction with the BSP. In fact, he claims that actually he incurred significant losses, higher than the amount he received from BSP, as positively shown in the ICPA Reports. As such, accused submits that there is clearly no basis for the instant complaint since he derived no taxable income from the subject transaction as defined under Section 31 of the NIRC of 1997, as amended.

Accused also asserts that one of the salient features of Republic Act (RA) No. 11256[113], which was signed into law on March 29, 2019, is the exclusion of the sale of gold to the BSP in computing gross income. Thus, he claims that sale of gold is no longer subject to income tax under Section 32 of the NIRC of 1997, as amended.

Nonetheless, accused argues that with the foregoing amendment to the NIRC and considering that Section 255 of the NIRC of 1997, as amended, is a penal provision, Article 22 of the *Jc*

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[113] An Act To Strengthen The Country's Gross International Reserves (GIR), Amending For The Purpose Sections 32 And 151 Of The National Internal Revenue Code, As Amended, And For Other Purposes.

Revised Penal Code applies suppletorily. As such, he insists that RA No. 11256, as amendatory law which operates in favor of the accused, should be given retroactive effect.

THE COURT'S RULING

In these consolidated cases, accused Rashdi Camlian Sakaluran is charged before this Court for his alleged failure to supply correct and accurate information in his ITRs for taxable years 2006 to 2009. The prosecution claims that accused has violated the first paragraph of Section 255 of the NIRC of 1997, as amended, which 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 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 (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> x x x." *(Emphases Supplied)*

From the foregoing, the prosecution must prove beyond reasonable doubt the existence of the following elements before accused can be held liable under Section 255 of the NIRC of 1997, as amended, *viz.*:

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

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.

Accused is required under the NIRC of 1997, as amended, to supply correct and accurate information in his annual ITRs.

Based on Sections 51 and 74 of the NIRC of 1997, as amended, accused has the duty to file an annual income tax return, as well as to supply correct and accurate information thereon. The pertinent portions of the said provisions read as follows:

"**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;

x x x

(4) The income tax return shall be filed in duplicate by the following persons:

(a) A resident citizen – on his income from all sources;

x x x

(B) *Where to File.* – Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) *When to File.* –

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

x x x."

"**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. <u>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</u>. 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." *(Underscoring supplied)*

Corollary, Section 32(A)(2) of the NIRC of 1997, as amended, defines what constitutes gross income, *viz.*: *gr*

> "**SEC. 32.** ***Gross Income.*** – (A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including, but not limited to, the following items:
>
> x x x
>
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession." (*Underscoring supplied*)

Based on the foregoing provisions, it is clear that a taxpayer is duty bound to declare all of his income from all sources, including, but not limited to, the conduct of trade or business.

In these consolidated cases, accused himself admitted that during taxable years 2006 to 2009, he had transactions with the *Bangko Sentral ng Pilipinas* (BSP) – Zamboanga Branch under its Gold Buying Station for the sale of refined gold and silver.[114] That he is the owner of the gold and silver sold to BSP as shown by the warranty in Paragraphs 2 and 3 of the Letters of Delivery and Sales[115] (LDS) from the BSP.[116] Clearly, accused received money from the sale of gold and silver to the BSP, and therefore was duty bound to declare the same as part of his gross income in his ITRs since he is required by law to declare his income derived from **all sources**.

Considering that accused is required by law to declare all of his income from all sources, accused filed his ITRs for taxable years 2006[117], 2007[118], 2008[119], and 2009[120] with the BIR RDO No. 33. Hence, the first element of the crime charged, requiring accused to supply correct and accurate information in his ITRs, *i.e.*, declare all of his income from all sources, is clearly satisfied in this case.

Accused failed to supply correct and accurate information in his annual ITRs for taxable years 2006 to 2009 at the time or ge

[114] Par. 1(e), Amended JSFI, Docket, CTA Crim. Case No. O-411 (Vol. IV), p. 1985.
[115] Exhibits "P-3" to "P-185".
[116] Par. 1(g), Amended JSFI, Docket, CTA Crim. Case No. O-411 (Vol. IV), p. 1985.
[117] Exhibit "P-196".
[118] Exhibit "P-197".
[119] Exhibit "P-192".
[120] Exhibit "P-193".

times required by law or rules and regulations.

Having established that there was income on the part of accused and that he is required by law to declare all of his income from all sources, this Court shall now determine if he indeed supplied correct and accurate information during the filing of his ITRs.

Perusals of the annual tax returns[121] for taxable years 2006, 2007, 2008, and 2009 *vis-à-vis* the Summary of Sales for taxable years 2006[122], 2007[123], 2008[124] and 2009[125], as well as the Letters of Delivery and Sale[126], would reveal that accused failed to declare in his ITRs, the income received from his transactions with the BSP. This fact was confirmed by the court-commissioned ICPA Enrico T. Pizarro during his cross-examination that accused's transactions with the BSP were not included in the annual declaration of revenue and cost in the subject ITRs, thus:

ATTY. CACAYURAN:

Thank you, Mr. Witness.

Q. Mr. Witness, you mentioned a while ago that you, one of the documents you examined for compliance is the Income Tax Returns. Do you confirm, Mr. Witness, the receipt of the income payments from the BSP by accused which is incorporated in your Report?

MR. PIZARRO:

A. **This transaction was not included in the tax declaration.**

ATTY. CACAYURAN:

Q. Every transaction, it was not declared in the Income Tax Return? *[initials]*

[121] *Supra* Notes 117-120.
[122] Exhibit "A-346", ICPA Binder No. 6.
[123] Exhibit "A-347", ICPA Binder No. 6.
[124] Exhibit "A-348", ICPA Binder No. 6.
[125] Exhibit "A-349", ICPA Binder No. 6.
[126] Exhibits "P-3" to "P-185".

MR. PIZARRO:

A. These were not included as part of the...

ATTY. CACAYURAN:

Q. Of the tax return of the accused, Mr. Witness?

MR. PIZARRO:

A. Yes.

ATTY. CACAYURAN:

Q. How about the cost, Mr. Witness, did accused declare in his Income Tax Return the cost?

MR. PIZARRO:

A. No. **Both revenues and cost were not declared.**[127] *(Emphases supplied)*

Apparently, accused's income from the sales transactions with the BSP were not included in the subject ITRs.

However, a more perplexed argument is now raised by accused, that by virtue of RA No. 11256 dated March 29, 2019, his sale of gold to the BSP is considered an exclusion in computing gross income thereby, making it no longer subject to income tax under Section 32 of the NIRC of 1997, as amended.

This Court finds accused's argument untenable.

Indeed, Section 1[128] of RA No. 11256[129], amends Section 32 of the NIRC of 1997, as amended, in the sense that sale of gold to the

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[127] TSN dated July 5, 2017, pp. 23-24.

[128] SECTION 1. *Amendment of Section 32 of the National Internal Revenue Code, As Amended.* – Section 32(B)(7) of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 32. *Gross Income.* –

x x x

BSP is now excluded in computing gross income. Nonetheless, accused attempt to shelter himself under said law by giving it retroactive application is unwarranted.

Verily, Article 4 of the New Civil Code, enunciates the rule on non-retroactivity of laws, in that "(l)aws shall have no retroactive effect, unless the contrary is provided."[130] The prospectivity principle of laws has long been observed by this Court, as a matter of fact, in the landmark case of *ALBINO S. CO vs. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES*[131], the Supreme Court made the following disquisitions, to wit:

> The principle of prospectivity of statutes, original or amendatory, has been applied in many cases. These include: *Buyco v. PNB, 961 2 SCRA 682 (June 30, 1961)*, holding that Republic Act No. 1576 which divested the Philippine National Bank of authority to accept back pay certificates in payment of loans, does not apply to an offer of payment made before effectivity of the act; *Largado v. Masaganda, et al., 5 SCRA 522 (June 30, 1962)*, ruling that RA 2613, as amended by RA 3090 on June, 1961, granting to inferior courts jurisdiction over guardianship cases, could not be given retroactive effect, in the absence of a saving clause; *Larga v. Ranada, Jr., 64 SCRA 18*, to the effect that Sections 9 and 10 of Executive Order No. 90, amending Section 4 of PD 1752, could have no retroactive application; *People v. Que Po Lay, 94 Phil. 640*, holding that a person cannot be

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(B) The following items shall not be included in gross income and shall be exempt from taxation under this title:

x x x

(7) Miscellaneous Items. –

x x x

(i) *Income Derived from the Sale of Gold Pursuant to Republic Act No. 7076.* – Income derived from the following transactions pursuant to Republic Act No. 7076, otherwise known as the *'People's Small-Scale Mining Act of 1991'*:

(1) The sale of gold to the Bangko Sentral ng Pilipinas by registered small-scale miners as defined under Republic Act No. 7076, and accredited traders; and

(2) The sale of gold by registered small-scale miners to accredited traders for eventual sale to the Bangko Sentral ng Pilipinas."

129 *Supra* Note 113.
130 *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 205837, November 21, 2017.
131 G.R. No. 100776. October 28, 1993.

> convicted of violating Circular No. 20 of the Central, when the alleged violation occurred before publication of the Circular in the Official Gazette; *Baltazar v. C.A., 104 SCRA 619*, denying retroactive application to P.D. No. 27 decreeing the emancipation of tenants from the bondage of the soil, and P.D. No. 316 prohibiting ejectment of tenants from rice and corn farmholdings, pending the promulgation of rules and regulations implementing P.D. No. 27; *Nilo v. Court of Appeals, 128 SCRA 519*, adjudging that RA 6389 which removed 'personal cultivation' as a ground for the ejectment of a tenant cannot be given retroactive effect in the absence of a statutory statement for retroactivity; *Tac-An v. CA, 129 SCRA 319*, ruling that the repeal of the old Administrative Code by RA 4252 could not be accorded retroactive effect; *Ballardo v. Borromeo, 161 SCRA 500*, holding that RA 6389 should have only prospective application; *(see also Bonifacio v. Dizon, 177 SCRA 294, and Balatbat v. CA, 205 SCRA 419)*.

More so, further reading of RA No. 11256 shows that there is no provision providing for retroactive application of the exclusion of sale of gold to the BSP in computing gross income. As such, the general rule applies, the law is therefore given prospective application.

Also, as opposed to accused's contention, RA No. 11256 is not a penal law, which therefore means, Article 22 of the Revised Penal Code cannot be given application in the present cases.

Lastly, *assuming arguendo*, that RA No. 11256 be given retroactive application, the implementing rules and regulations under Section 5[132] thereof, still requires the registration and accreditation of small-scale miners and traders in order to avail the tax exemption under the law.

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[132] Sec. 5. *Implementing Rules and Regulations.* – Within sixty (60) days after the effectivity of this Act, the Governor of the Bangko Sentral ng Pilipinas, the Secretary of Environment and Natural Resources, the Secretary of the Interior and Local Government, and the Commissioner of Internal Revenue shall recommend to the Secretary of Finance, for promulgation, the rules and regulations necessary for the effective implementation of this Act. The rules and regulations shall include provisions for the registration and accreditation requirements of small-scale miners and traders in order to avail of the tax exemptions under this Act.

It must be noted that in the case of *SMART COMMUNICATIONS, INC. vs. THE CITY OF DAVAO, ET AL.*[133], the Supreme Court held that "[t]ax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical."

In view of the foregoing, the second element of the crime charged has been sufficiently proven in these consolidated cases.

The prosecution failed to prove beyond reasonable doubt that accused willfully failed to supply correct and accurate information in his ITRs.

Parenthetically, even with the presence of the first two elements, a verdict of conviction will not be sustained unless the prosecution is able to prove beyond reasonable doubt, that the act of accused in failing to supply correct and accurate information in his income tax returns for taxable years 2006 to 2009, was done *willfully*, with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

In the case of *FELONILA Z. CALUAG vs. PEOPLE OF THE PHILIPPINES*[134], the Court *En Banc* had the occasion to define the term "willful" as follows:

> "According to Black's Law Dictionary, the term 'willful' is defined as:
>
> > 'An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law. x x x

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[133] G.R. No. 155491, September 16, 2008, citing *Commissioner of Internal Revenue vs. Visayan Electric Company*, G.R. No. L-22611, May 27, 1968 and *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation*, G.R. Nos. 83583-84, September 30, 1991.

[134] CTA EB Crim. No. O-47 (CTA Crim. Case No. O-330), September 17, 2018.

> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> Act is 'willful' within meaning of section (*sic*) of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.*, C.A.R.I., 504 F.2d 1306, 1315.'

> Moreover, 'willfulness' in tax crimes has been simply 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.'"

To prove willfulness, the prosecution posits that accused's failure to supply correct information in his ITRs for four (4) consecutive years clearly shows his act to be willful. That the continued under-declaration of his income led to deficiency income tax due to the government.

In his defense, accused claims that his acts were made in good faith and without malice considering that he merely relied on representations made by the BSP that his gold and silver sales transactions with them were tax-free. Accused continues that had he known otherwise, he would not have gone into gold transactions with the BSP, as shown in his judicial affidavit, to wit:

Q32: In the years 2006 to 2009 that you transacted gold with the BSP did you pay taxes to the BIR?

A32: No. gr

Q33: Why did you not pay tax on the gold transactions?

A33: I was made to understand by BSP officers that our transactions with the BSP were tax exempt.

Q34: Who advised you that your transactions with the BSP were tax exempt?

A34: Ms. Nieves Lozada, then Gold Buying Station Head of BSP Zamboanga, relayed this information to me as well as to other gold traders who transacted with the BSP.

Q35: What was your reaction after receiving the confirmation from Ms. Lozada of the BSP?

A35: I was more comfortable entering into transactions with BSP and as a layman, I sincerely relied on Ms. Lozada's, the Gold Buying Station Head, confirmation and believed in good faith that the sale of gold was tax exempt.

Q36: Why did you rely on BSP's advice?

A36: I relied on the advice because BSP is a reputable government agency and they would be in a position to have that information since they were directly transacting with the gold traders.

Q37: What other measures, if any, did you take to confirm the BSP's advice that the transaction was tax free?

A37: I inquired with and it was confirmed to me by other gold traders.

Q38: What did the other gold sellers advise you?

A38: They mentioned that they likewise did not include the income from the sale of gold in their income tax returns because of BSP's advice that the sale of gold to BSP is zero-rated and therefore, tax-exempt. *Jr*

Q39: What was your reaction upon receiving such advice?

A39: I felt relieved and protected because it is the primary reason why I entered into transactions with BSP. I was more reassured.

Q40: Would you have entered into gold sales transactions with BSP if they were not tax exempt?

A40: No.

Q41: Why would you not enter into gold trade transactions with the BSP if this were the case?

A41: Gold traders like myself generally earn a little profit or break-even in trading considering the high acquisition cost of gold. If we are still liable for taxes in the gold trading transaction, we will be incurring losses on the said transactions specifically 20 Pesos per gram maximum and you have to wait 45 days. In other words, if the transactions were taxed I would have incurred losses thus I would not enter into gold trade transactions with BSP.[135]

To bolster his claim, accused's witness, Mr. Melodino Patiño, a former Administrative Officer and former Branch Head of BSP Zamboanga, corroborated that the BSP's Gold Buying Program adopted the policy that the transactions are tax tree and the "no question policy" in accordance with its mandate, *viz.*:

Q7: Based on your personal knowledge as the former Administrative Officer and former Branch Head of BSP Zamboanga, what was the position of the BSP on the tax treatment for the gold buying transactions? *ye*

[135] Exhibit "A-364", pp. 8-10; Amended Judicial Affidavit, Docket, CTA Crim. Case No. O-411 (Vol. V), pp. 2806-2808.

A7: Even before the opening of the Gold Buying Station in Zamboanga, we were already informed about the policy of the BSP in relation to the Gold Buying Program which is that the transactions are Tax Free and the "no question policy" was to be adopted.

This tax-free policy was common knowledge within BSP. In fact, I have personal knowledge that BSP Regional Office in Davao City, where Zamboanga BSP was directly under, implemented the same policy as well as other branches in other regions. No taxes were charged to the gold traders.

x x x

Q11: Does BSP have *[sic]* the power to declare the transactions are tax-free?

A11: As an employee of BSP for over thirty-five (35) years, I am aware that BSP has the power and the authority to spend money or to incur losses to boost the country's international reserve, to keep inflation stable, to keep the banking system sound and healthy, and to manage the amount of money in circulation. Based on my personal knowledge while working for BSP, it is not unusual for BSP to implement projects where it can possible incur losses to protect or stabilize the exchange rate and to boost the international reserve. The implementation of the tax free gold buying program was not a surprise because we understood that the act was pursuant to BSP's mandate to boost the international reserves even to the extent of allowing itself to incurring losses by bearing the cost of taxes. What came as a surprise was the fact that cases were filed against the gold traders for evasion of taxes when the gold buying program really meant for the transactions to be tax-free.

Q12: Did the BSP advise the gold traders that the gold transactions were tax free?

A12: Yes. That was the way BSP encouraged the gold traders to sell to them.

Q13: Do you confirm that the gold traders were actually informed that the transactions were tax free?

A13: Yes.

Q14: As former Administrative Officer and Branch Head of BSP, did you share the same opinion as to the tax-free treatment of the gold transactions?

A14: Yes. I had no reason to doubt its implementation. BSP would implement measures like the tax-free gold buying program to pursue its mandate to increase gold reserves because what appears to be a loss on taxes translates as a bigger gain for the country as it results in an improvement of the country's credit rating.

Q15: Why did you have the opinion that the transactions were tax-free?

A15: It was not an opinion. This was based on instructions from the head office that there will be no taxes on the transactions and the no questions policy was to be implemented. The fact that there were no instructions to withhold taxes supported the fact that the gold transactions were indeed tax free.[136]

More so, during cross-examination, Mr. Patiño further elaborated on the *no questions, no requirement* policy by the BSP, to wit:

ATTY. CACAYURAN:

Thank you, Mr. Witness.

Q. Mr. Witness, in your answer to Question No. 10, you mentioned of a requirement, are these requirements you're referring to?

MR. PATIÑO: gr

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[136] Exhibit "A-372", pp. 3-5; Judicial Affidavit dated March 8, 2018, *id.*, pp. 3020-3022.

A. Requirements?

ATTY. CACAYURAN:

Q. Ah, in your answer, Mr. Witness, you said that 'gold traders can simply bring gold in a specified form to BSP branches and they will be paid accordingly without need of presenting requirements and payment of taxes.' What are these requirements you are referring to, Mr. Witness?

MR. PATIÑO:

A. Without need of requirements. There were no requirements. No papers required.

ATTY. CACAYURAN:

Q. Identification card, Mr. Witness, do require them?

MR. PATIÑO:

A. No.

ATTY. CACAYURAN:

Q. Is that the usual process, Mr. Witness, not to even ask for identification?

MR. PATIÑO:

A. Yeah, in all gold buying station all over the country, in Naga, in Davao, in Zamboanga.

ATTY. CACAYURAN:

Q. You said, Mr. Witness, that, in Question 13, you were asked if 'do you confirm that the gold traders were actually informed that the transactions were tax-free?' Mr. Witness, you answered 'Yes.' How were these gold traders informed of the tax-free transaction status of the alleged gold trading, Mr. Witness?

MR. PATIÑO:

A. Normally we inform them because some of them will come first and ask what's our policy, so we tell them that it's tax-free and there's no question asked, so they won't be afraid to sell their gold to us.[137]

Taking into account the foregoing, the prosecution failed to prove the third element of the crime charged. Accordingly, this Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused willfully failed to supply the correct and accurate information on his ITRs filed for taxable years 2006 to 2009.

No civil liability in the present cases.

The civil liability arising from a taxpayer's obligation to pay tax is not deemed instituted in the criminal case like tax evasion.

Pursuant to Section 11[138], Rule 9 of A.M. No. 05-11-07-CTA, otherwise known as the *Revised Rules of the Court of Tax Appeals* (RRCTA), in relation to Section 7(b)(1)[139] of RA No. 1125[140], as

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[137] TSN dated March 14, 2018, pp. 66-67.

[138] SEC. 11. *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

[139] Section 7. Jurisdiction. - The CTA shall exercise:

x x x

b. Jurisdiction over cases involving criminal offenses as herein provided:

x x x

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. **Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it**

amended by RA No. 9282[141], the civil aspect of these consolidated cases is deemed simultaneously instituted and jointly determined with the filing of the present criminal cases since "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."

However, in the recent case of *MACARIO LIM GAW, JR. vs. COMMISSIONER OF INTERNAL REVENUE*[142], the Supreme Court held that the civil liability arising from a taxpayer's obligation to pay tax is not deemed instituted in the criminal case like tax evasion because it came from a different source of obligation, *viz.*:

> "Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.
>
> **<u>It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.</u>**
>
> In the case of *Republic of the Philippines v. Patanao,* We held that:
>
>> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual 9z

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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. *(Emphasis Supplied)*

140 An Act Creating The Court Of Tax Appeals.

141 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

142 G.R. No. 222837, July 23, 2018.

premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of nonexistence of the criminal acts charged.** xxx.

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.,* We ruled that:

While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment** ye

> **governed by statute.** The **payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**" *(Citations Omitted)*

Nonetheless, 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 independently 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.[143]

Accused did not receive any of the assessment notices which renders PAN and FAN/FLD void.

Truly, settled is the rule that there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the NIRC,[144] Section 205 of the NIRC of 1997, as amended, provides that *"[t]he 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."* Meaning, in order for a civil liability be included in the judgment, it must be the final decision of the CIR – referring to a formal assessment.

[143] *Maria B. Castro vs. The Collector of Internal Revenue,* G.R. No. L-12174, April 26, 1962.
[144] *Quirico P. Ungab vs. Hon. Vicente N. Cusi, Jr., et al.* G.R. No. L-41919, May 30, 1980.

Going back in the present cases, the LOA No. LOA-211-2011-00000212/SN: eLA201000073855[145] dated June 23, 2011, NIC[146] dated October 17, 2011, PAN[147] dated February 4, 2015, and FLD[148] dated April 21, 2015 were presented in evidence. However, aside from the LOA, this Court notes that there was no further evidence presented to prove that these were duly received by accused. In his judicial affidavit, accused denied receipt of the assessment notices as follows:

> Q52: Did you receive any document from the BIR after the letter of authority that you mentioned?
>
> A52: No more documents from the BIR were sent in 2011 but recently a Warrant of Distraint and Levy was received by my sister.
>
> x x x
>
> Q57: Mr. Witness, was there a preliminary assessment of your tax liabilities made by the BIR against you if you know?
>
> A57: Yes.
>
> Q58: How did you know that a Preliminary Assessment Notice was issued by the BIR?
>
> A58: It was mentioned in one of the hearings and was it was used as reference by the accountant.[149]

Considering that accused denied having received the assessment notices from the BIR, it is incumbent upon the prosecution to prove by competent evidence that the notices were indeed received by accused. Stated differently, the burden is shifted to the BIR to prove by contrary evidence that accused received the assessment notices in the due course of mail. *gr*

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[145] Exhibit "P-186"; Exhibit "A-246".
[146] Exhibit "P-189"; Exhibit "A-333".
[147] Exhibit "A-334".
[148] Exhibit "A-335".
[149] Exhibit "A-364", pp. 11-12; Amended Judicial Affidavit, Docket, CTA Crim. Case No. O-411, (Vol. V), pp. 2809-2810.

In *COMMISSIONER OF INTERNAL REVENUE vs. GJM PHILIPPINES MANUFACTURING, INC.*[150], the Supreme Court ruled:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, **the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention**. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. **While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices**." *(Emphases Supplied)*

In these cases, the prosecution insists that they served the assessment notices. However, the prosecution failed to present any evidence to prove that the assessment notices were duly served and received by accused. Basic is the rule that bare allegations,

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[150] G.R. No. 202695, February 29, 2016.

unsubstantiated by evidence, are not equivalent to proof, *i.e.,* mere allegations are not evidence.[151]

Considering that the prosecution failed to prove that the PAN or FAN and FLD were indeed served to the accused taxpayer, either personally, or through registered mail, the subject deficiency tax assessments must be declared void. Hence, to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[152]

To recapitulate, the final determination of the Commissioner as to the tax liability is necessary in order for this Court to rule on the civil liability. This Court cannot merely rely on the computation of deficiency income tax found in the Joint Complaint Affidavit[153], which does not even bear the signature of the CIR. Accordingly, 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, this Court cannot include in its judgment an order to pay the deficiency taxes subject of the instant criminal cases.

WHEREFORE, premises considered, accused **RASHDI CAMLIAN SAKALURAN** is hereby **ACQUITTED** of the offenses charged against him in Criminal Case Nos. O-411, O-412, O-413 and O-414, for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accordingly, for insufficiency of evidence, no civil liability is likewise imposed.

SO ORDERED.

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

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[151] *Mirasol Castillo vs. Republic of the Philippines, et al.,* G.R. No. 214064, February 6, 2017.
[152] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018.
[153] Exhibit "P-2".

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice