REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NOS. O-409 & O-410** For: Violation of Sections 254 and 255 of the NIRC of 1997, as amended
- versus -	Members:
	DEL ROSARIO, *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
MA. CARLA BEATRICE C. CASTILLO, Accused.	Promulgated: NOV 03 2017 4:10 pm

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RESOLUTION

This resolves accused's **Demurrer to Evidence**, filed on April 26, 2017, without plaintiff's comment as per Records Verification dated August 30, 2017.

The instant Demurrer to Evidence was filed by the accused on the ground of insufficiency of plaintiff's evidence stating that plaintiff's imputations of tax evasion and failure to file an Income Tax Return (ITR) against accused are based on mere speculation and on an unfounded conclusion that accused's acquisition of the La Vista property in 2010 implies her receipt of an alleged undeclared income in 2010. Accused claims that if this absurd position would be upheld, any person who purchased a property using income that she earned or derived from a different year, or using savings, borrowings or other sources, would be immediately held criminally liable for tax evasion and failure to file an ITR.

Accused is charged before this Court with violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, under two (2) separate Informations, both dated May 30, 2014, which read:

a. CTA Criminal Case No. O-409:

The undersigned prosecutors of the Department of Justice, hereby accuse **MA. CARLA BEATRICE C. CASTILLO** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on or about April 2011, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino citizen residing in the Philippines, and required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused did not file her annual income tax return for taxable year 2010, which resulted to a basic deficiency income tax of Five Million Eight Hundred Thirty Thousand Two Hundred Eighty Pesos (P5,830,280.00) for taxable year 2010, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

b. CTA Criminal Case No. O-410:

The undersigned prosecutors of the Department of Justice, hereby accuse **MA. CARLA BEATRICE C. CASTILLO** for her failure to file her annual income tax return, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on or about April 2011, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino citizen residing in the Philippines, and required by law, rules and regulations to file her annual income tax return did, then and

> there, willfully, unlawfully and feloniously fail to file her annual income tax return for taxable year 2010, in violation of the provisions of the National Internal Revenue Code of 1997, as amended, to the damage and prejudice of the Government of the Republic of the Philippines in the amount of Five Million Eight Hundred Thirty Thousand Two Hundred Eighty Pesos (P5,830,280.00), as basic income tax deficiency, exclusive of interests and surcharges."

To substantiate its allegations in the above Informations, plaintiff presented in open court the testimonies of the following witnesses: (a) Josephine D. Duran; and (b) Socrates O. Regala. Further, plaintiff presented the following documentary evidences:

Exhibit	*Description*
"P-1"	Referral Letter of Hon. Kim S. Jacinto-Henares dated August 29, 2012 to Department of Justice
"P-2"	Joint Complaint-Affidavit of Socrates O. Regala, Josephine D. Duran and Cristina A. Kahulugan dated August 29, 2012
"P-3"	Joint Reply-Affidavit of Socrates O. Regala, Josephine D. Duran and Cristina A. Kahulugan dated October 25, 2012
"P-4"	Memorandum of the Bureau of Internal Revenue December 27, 2012
"P-5"	Certification dated January 17, 2012 issued by Revenue District Office (RDO) No. 39 through Clavelina S. Nacar
"P-6"	Certification dated January 20, 2012 issued by RDO No. 39 through Clavelina S. Nacar
"P-7"	Annual Income Tax Return (BIR Form 1701) of Ma. Carla Beatrice C. Castillo for taxable year 2008 consisting of five (5) pages
"P-8"	Annual Income Tax Return (BIR Form 1701) of Ma. Carla Beatrice C. Castillo for the year 2009 consisting of three (3) pages
"P-9"	Access Letter dated December 26, 2011 addressed to RDO Clavelina S. Nacar
"P-10"	Documentary Stamp Tax (DST) Return (BIR Form 2000-OT) of Ma. Carla Beatrice C. Castillo for the taxable year 2010, consisting of two (2) pages

"P-11"	Capital Gains Tax (CGT) Return (BIR Form 1706) of Mrs. Cristina Corona for the taxable year 2010, consisting of two (2) pages
"P-12"	Certification dated October 07, 2010 issued by the City Treasurer's Office of Quezon City
"P-13"	Tax Declaration of Real Property with Property Index 15-078-03-045
"P-14"	Deed of Absolute Sale between Ma. Cristina R. Corona and Ma. Carla Beatrice C. Castillo dated October 18, 2010
"P-15"	Access Letter dated December 27, 2011 addressed to RDO Clavelina S. Nacar
"P-16"	Certificate Authorizing Registration (CAR 2010 00097318)
"P-17"	Tax Clearance Certification (TCC) signed by Mahinardo G. Mailig, consisting of four (4) pages
"P-18"	Transfer Certificate of Title No. N-254901 in the name of Cristina R. Corona, consisting of four (4) pages
"P-19"	Transfer Certificate of Title No. 004-2010010259 in the name of Ma. Carla C. Castillo, consisting of four (4) pages
"P-20"	First Notice dated February 9, 2012, consisting of three (3) pages
"P-21"	Second Request for Presentation of Records dated May 29, 2012 with Registry Receipt dated June 1, 2012
"P-21-A"	Registry Receipt dated June 1, 2012 in relation to Second Request for Presentation of Records dated May 29, 2012
"P-22"	Final Notice dated July 27, 2012 with Registry Receipt dated July 27, 2012
"P-22-A"	Registry Receipt dated July 27, 2012 in relation to Final Notice dated July 27, 2012
"P-23"	Letter of Authority (LOA-211-2012-00000003) dated January 25, 2012 with attached Registry Receipt dated January 30, 2012
"P-23-A"	Registry Receipt dated January 30, 2012 in relation to Letter of Authority (LOA-211-2012-00000003) dated January 25, 2012
"P-24"	Notice for an Informal Conference addressed to Ma. Carla Beatriz C. Castillo dated May 14, 2013, consisting of two (2) pages with attached LBC Express Receipt dated May 16, 2013
"P-24-A"	LBC Express Receipt dated May 16, 2013 in relation

	to the Notice for an Informal Conference addressed to Ma. Carla Beatriz C. Castillo dated May 14, 2013
"P-25"	Letter dated May 23, 2013 of Ma. Carla Beatrice C. Castillo addressed to the BIR
"P-26"	Preliminary Assessment Notice (PAN) dated November 6, 2013 addressed to Ma. Carla Beatriz C. Castillo with Total amount of Php11,783,530.59, consisting of three (3) pages
"P-27"	Letter dated January 24, 2014 of Ms. Julie Ann S. Morales, Authorized Representative of Ma. Carla Beatrice C. Castillo addressed to the BIR
"P-28"	Response to the Preliminary Assessment Notice dated November 6, 2013, dated February 19, 2014
"P-29"	Formal Letter of Demand (FLD) dated September 29, 2015 addressed to Ma. Carla Beatrice C. Castillo with total amount of P13,913,215.52, consisting of three (3) pages with Registry Receipt dated October 6, 2015
"P-29-A"	Registry Receipt dated October 6, 2015 in relation to the FLD dated September 29, 2015

In the Resolution[1] dated April 20, 2017, the Court admitted plaintiff's exhibits except for Exhibits "P-2", "P-3", "P-4", "P-5", "P-19", "P-20", "P-21", "P-21-A", "P-22", "P-22-A", "P-23-A", "P-24-A", "P-25", "P-27", and "P-29-A".

On April 26, 2017, accused filed a Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence. In a Resolution dated August 9, 2017, the Court granted the same and directed the prosecution to file his comment/opposition to accused's Demurrer to Evidence.

Considering that plaintiff failed to file his comment/opposition, the Court shall now resolve accused's Demurrer to Evidence.

Accused's Demurrer to Evidence is based on the following grounds: (1) plaintiff's evidence failed to prove accused's alleged receipt of undeclared income in 2010, and her supposed liability to pay tax on said income; (2) plaintiff's evidence is insufficient to prove accused's alleged "willfulness" in evading the payment of taxes or filing of ITR; and (3) plaintiff's own evidence reveal that these

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[1] Docket, CTA Crim. Case No. O-409, vol. V, pp. 2545-2546.

criminal cases were prematurely and hastily filed in violation of accused's right to due process.

As regards the first ground, accused cited the case of *Commissioner of Internal Revenue, et al. vs. Court of Appeals, et al.*[2], where the Supreme Court ruled that "before one is prosecuted for willful attempt to evade or defeat any tax under Section 253 (now 254) and 255 (now 256) of the (Old) Tax Code, the fact that a tax is due must first be proved." Accused also avers that it is a well-settled rule that no income tax is due unless there is an income or gain which is realized or received, citing the case of *Chamber of Real Estate and Builders' Associations, Inc. vs. Executive Secretary*[3].

Accused further states that in order for the plaintiff to establish the elements of the receipt of income, and the corresponding tax due from accused, plaintiff's evidence must prove the "property, activity or service" that produced the accused's supposed undeclared income, pursuant to the case of *Commissioner of Internal Revenue vs. Baier-Nickel.*[4]

In addition, accused asserts that it is plaintiff's position that the amount that may be used to purchase a property can only be sourced from income derived in the same year of purchase and that if this position would be upheld, a person who purchased a property using income that she earned or derived from a different year, or using savings, borrowings, and other sources would automatically be held criminally liable for tax evasion.

Accused argues that plaintiff's witnesses admitted that they merely relied on her ITRs for 2008 and 2009, the Deed of Sale, Certificate Authorizing Registration (CAR), Documentary Stamp Tax (DST) Return and Transfer Certificate of Title (TCT) No. 004-2010010259 covering the La Vista property in presuming or concluding that accused's acquisition of the La Vista Property in 2010 implies her receipt of income in the said year. Plaintiff merely speculated that since accused purchased a property in 2010, accused must have received undeclared income in the same year.

For the second ground, accused contends that plaintiff failed to show the existence of any premeditated, malicious and fraudulent

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[2] G.R. No. 119322, June 4, 1996.
[3] G.R. No. 160756, March 9, 2010.
[4] G.R. No. 153793, August 29, 2006.

scheme on her part in order to prove the element of "willfulness" to evade the payment of tax and in failing to file a return in these cases. Accused avers that the filing of these criminal cases was based on mere inference or speculations instead of concrete evidence showing fraud.

Accused avers that plaintiff's reliance on the Net Worth and Expenditure Methods in arriving at its baseless conclusions is inapplicable in these criminal cases and that plaintiff cannot rely on these methods to prove fraud in these cases. Facts seeking to establish a criminal violation can never be based on mere presumptions. To rule otherwise would be contrary to accused's constitutional right to be presumed innocent.

Anent the last ground, accused asserts that there has been a violation of her right to due process considering that the criminal cases were prematurely and hastily filed.

Accused relies on the Supreme Court ruling in *Commissioner of Internal Revenue vs. Court of Appeals*, saying that in the absence of a *prima facie* evidence showing a fraudulent income tax return, an assessment of deficiency tax due is a condition sine qua non for a criminal prosecution for willful attempt to defeat and evade the income tax.

Moreover, accused argues that pursuant to Revenue Memorandum Order (RMO) No. 27-2010, a Complaint involving a case covered by the Run After Tax Evaders (RATE) Program, may be filed only after the BIR conducted: (1) a preliminary investigation, where the *prima facie* evidence of fraud or tax evasion is established; and (2) formal investigation, where the taxpayer's books of accounts, accounting records and third party records are examined. In this case, accused stresses that neither a preliminary investigation nor a formal investigation was actually conducted by the BIR.

It must be noted that a demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[5]

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[5] *Gutib vs. Court of Appeals, et al.,* G.R. No. 131209, August 13, 1999.

In this case, accused is charged with attempt to evade or defeat tax and failure to file return for taxable year 2010, under Sections 254 and 255 of the NIRC of 1997, as amended, respectively.

Accordingly, the Court shall now discuss whether the elements of Sections 254 and 255 of the NIRC of 1997, as amended, were established by the prosecution as it is settled that in passing upon the sufficiency of the evidence raised in a demurrer, the Court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[6] It has been said that a demurrer to evidence is sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim.[7]

Sections 254 and 255 of the NIRC of 1997, as amended provide:

> "**SEC. 254.** *Attempt to Evade or Defeat Tax.* **- Any person who willfully attempts in any manner to evade or defeat any tax <u>imposed under this Code</u> or the payment thereof** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."

> "**SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* **- <u>Any person required under this Code or by rules and regulations</u> promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such**

[6] *Rivera vs. People of the Philippines*, G.R. No. 163996, June 9, 2005.
[7] *Spouses Condes vs. Court of Appeals*, G.R. No. 161304, July 27, 2007.

> **record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." *(Boldfacing & underscoring supplied)*

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

1. **Accused is required by the NIRC to pay tax**;
2. Accused attempts to evade or defeat any tax or the payment thereof; and
3. Such attempt to evade tax is willful.

On the other hand, to convict the accused for the offense charged under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution:

1. **Accused is required under the NIRC or its rules and regulations to pay any tax or make a return**;

2. Accused failed to pay the required tax, or make a return at the time required by law or rules and regulations; and

3. Accused's failure to pay the required tax or to make a return at the time required by law or rules and regulations is willful.

The common element under Sections 254 and 255 of the NIRC of 1997, as amended, is to establish that the accused is required to pay tax and/or file a tax return. The rest of the elements of both offenses under Sections 254 and 255 of the NIRC of 1997, as amended, are dependent on their respective first element, which is the presence of the requirement to pay tax and/or to file a return as required by the NIRC. In other words, neither can there be a willful attempt to evade tax nor willful failure to pay a tax if there is no requirement to pay the same.

To prove the first element of the offense under Sections 254 and 255 of the NIRC of 1997, as amended, the prosecution is burdened to establish two (2) indispensable components, namely: (1) that accused is a resident of the Philippines as alleged in both Informations; and (2) the source of income of the accused in taxable year 2010 including the taxable income derived therefrom, which income was not declared in the corresponding Income Tax Return (ITR) for 2010.

It is worth stressing that the NIRC of 1997, as amended, requires a Filipino citizen residing in the Philippines to file an Income Tax Return and to pay income tax on income from within and without the Philippines. This requirement is evident from the provisions of Sections 23, 24 and 51 of the NIRC of 1997, as amended, *viz.*:

"SEC. 23. *General Principles of Income Taxation in the Philippines* - Except when otherwise provided in this Code: (A) **A <u>citizen of the Philippines residing therein</u> is taxable <u>on all income derived from sources within and without</u> the Philippines;** (B) A nonresident citizen is taxable only on income derived from sources within the Philippines; (C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income derived from sources within the Philippines: *Provided,* That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker; (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;(E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; and (F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."

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"**SEC. 24. *Income Tax Rates* –**

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.*

(1) **An income tax is hereby imposed**: (a) **On the taxable income** defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year **from all sources within and without the Philippines by every individual citizen of the Philippines residing therein**; (b) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection(C) of Section 23 hereof; and (c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (b), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines."

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"**SEC. 51. *Individual Return.* -**

(A) *Requirements.* -

(1) Except as provided in paragraph (2) of this Subsection, **the following individuals are <u>required to file an income tax return</u>**: (a) **Every Filipino citizen <u>residing</u> in the Philippines**; (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines; (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

(2) The following individuals shall not be required to file an income tax return; (a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided,* That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippine shall file an income tax return, regardless of the amount of gross income; (b) An individual with respect to pure compensation income, as defined in Section 32 (A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided,* That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: *Provided, further*, That an individual whose compensation income derived from sources within the Philippines exceeds Sixty thousand pesos (P60,000) shall also file an income tax return; (c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and (d) An individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special. xxx." *(Boldfacing & underscoring supplied)*

The aforequoted provisions also require a non-resident citizen of the Philippines to file an ITR and pay income tax on taxable income derived only from within the Philippines. This shows that a resident citizen and a non-resident citizen are required to file ITR and pay income tax, albeit the taxable base is different, that is, on income from all sources (within and without the Philippines) for resident citizen and on income derived from within the Philippines for non-resident citizen. While both Informations allege that accused is a resident of the Philippines, the prosecution must establish by competent and sufficient evidence that accused was a resident of the Philippines during the year 2010.

After carefully reviewing the records, the Court noted the absence of evidence, whether documentary or testimonial, establishing the foregoing components of the first element of the offenses charged against the accused. The prosecution failed to show that accused was a resident of the Philippines in taxable year 2010. Neither was there a proof of the possible or likely source of income of the accused in 2010, nor proof of accused's taxable income derived therefrom.

The prosecution found probable cause against the accused in this case holding that the use of the expenditure method is a valid tool to determine a taxpayer's alleged liability citing as basis Section 43 of the NIRC of 1997, as amended and the ruling in *William Li Yao vs. Commissioner of Internal Revenue.*[8] The prosecution further states that the expenditure method, together with the net worth method, is utilized by the BIR in order to track undeclared income of taxpayers.

There is no denying that the Commissioner of Internal Revenue is allowed to employ methods to compute the income of a taxpayer pursuant to Section 43 of the NIRC of 1997, as amended,[9] and in fact, it is settled that in civil case the application of the net worth method does not require identification of the sources of the alleged unreported income and the determination of the tax deficiency by the government is *prima facie* correct.[10] Nevertheless, **in criminal case, as in the cases at bar, the prosecution has to identify the likely source of the unreported or undeclared income**. The requirement to prove the likely source of income to justify the use of the expenditure method was enunciated in *Bureau of Internal Revenue vs. Court of Appeals*[11] where the Supreme Court held:

> In *Ungab v. Judge Cusi, Jr.*, we ruled that tax evasion is deemed complete when the violator has knowingly and

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[8] G.R. No. L-11875, December 28, 1963.

[9] **SEC. 43.** ***General Rule***. - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.

[10] *The Commissioner of Internal Revenue vs. Avelino*, G.R. No. L-14847, September 19, 1961.

[11] G.R. No. 197590, November 24, 2014.

willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. **However, in *Commissioner of Internal Revenue v. Court of Appeals*, we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.**

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.

In the case at bar, petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds.

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And since the underdeclaration is more than 30%of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as prima facie evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. **It agreed with Acting Justice Secretary Devanadera that petitioner failed to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and "to show sufficient proof of a likely source of**

[respondent spouses'] income that enabled them to purchase the real and personal properties adverted to x x x."

We find otherwise.

The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit. The computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the under declaration exceeded 30% of the reported or declared income.

The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit. The pertinent portion reads:

> 7. x x x x
>
> [Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/ rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and came up with the **findings that indeed the unexplained funds sought to have been used in acquiring the valuable property in Tagaytay x x x came from the underdeclaration of rental income.**

Apparently, the revenue officers considered respondent <u>Antonio's rental business to be the likely source of their unreported or undeclared income</u> due to his unjustified refusal to allow the revenue officers to inspect the building." *(Boldfacing and underscoring supplied)*

Without evidence on the likely source of income and the corresponding income derived therefrom by the accused during the concerned taxable year, the Court casts a serious doubt as to the veracity of the offenses charged against the accused. The acquisition made by accused of the La Vista property in 2010 could not conclusively be presumed as arising from her receipts of undeclared income in 2010 as the consideration involved therein may likewise be presumed to have been sourced from donations, borrowings and/or from income subjected to final tax consistent with an accused's right to the presumption of innocence.

It is basic truism that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.[12] Failing to prove the required quantum of evidence, the presumption of innocence must prevail and accused should be acquitted.[13]

All told, as there is absence of proof showing that accused is a resident of the Philippines in 2010 and that there was a likely source of income of accused in 2010 vis-à-vis the income she derived therefrom during the same year, the present Demurrer to Evidence should rightly be granted.

In view of the foregoing, the Court deems it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, accused's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Criminal Case Nos. O-409 and O-410 are **DISMISSED** for failure of the prosecution to present sufficient evidence to warrant conviction beyond reasonable doubt.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

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[12] *Alferez vs. People of the Philippines*, G.R. No. 182301, January 31, 2011.
[13] *The People of the Philippines vs. Santos*, G.R. No. 175593, October 17, 2007.