REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-407**
	For: Failure to Supply Correct and Accurate Information in the Income Tax Return in violation of Section 255 in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended.
-versus-	
	Members:
ENVIROAIRE, INC. represented by TYRONE N. ONG *(a.k.a. Tyrone Ng Arejola)* and ARLENE CHUA *(a.k.a. Arlene Miyron Matela Chua and Arlene Miyron Chua Arejola),* *Accused.*	**DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN,** *JJ.*
	Promulgated: FEB 2 6 2020 ; 9:05 a.m.

x- -x

DECISION

DEL ROSARIO, P.J.:

This is a criminal case filed by the prosecution against accused Tyrone N. Ong and Arlene Chua for violation of Section 255 in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, for the alleged failure to supply correct and accurate information in the Income Tax Return (ITR) of Enviroaire, Inc. for taxable year 2007.[1]

FACTS

Enviroaire, Inc. *(Enviroaire, for brevity)* is a corporation duly organized and existing under the laws of the Republic of the

[1] CTA Docket, pp. 4-7.

Philippines.[2] It is a registered taxpayer of Revenue District Office (RDO) No. 41 with Tax Identification No. (TIN) 218-084-255-000 and with registered address at 140 Shaw Blvd., Bagong Silang, Mandaluyong City.[3]

In 2007, Enviroaire sold goods and services to PNP in the total amount of P239,901,460.00 as evidenced by fourteen Invoices.[4] It received check payments with Check No. 0000457825 dated December 26, 2007 and Check No. 0000457991 dated December 27, 2007 bearing the amounts of P85,179,953.22 and P140,531,250.01, respectively,[5] and it issued the corresponding Official Receipt (OR) Nos. 7760 and 7761, both dated January 17, 2008, recognizing receipts of the amounts pertaining to said sales transaction.[6]

Enviroaire was later subjected to investigation by virtue of a *Subpoena Duces Tecum* issued by the Commission on Audit dated April 26, 2012.[7] The said *Subpoena* ordered the Revenue District Officer of RDO 41-Mandaluyong City to issue a certification as to whether the amounts of P85,179,953.22 under OR No. 7760 dated January 17, 2008, and P140,531,250.01 under OR No. 7761 dated January 17, 2008 were included in the gross sales of Enviroaire in its taxes [returns] filed for years 2007 and 2008.[8] RDO 41 replied to the *Subpoena*, in an undated letter which COA received on May 14, 2012, certifying that Enviroaire's declared gross sales for the taxable year 2008 *[sic]* per its ITR filed on April 14, 2008 is P12,611,752.93 and the amounts reflected in OR Nos. 7760 and 7761 were not included therein.[9]

A Letter of Authority (LOA-211-2012-00000046), dated June 6, 2012, was issued to Enviroaire by then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares authorizing Revenue Officer Enrico Omana/Group Supervisor Jose Pazcoguin Jr. of Special Investigation Division to examine the books of accounts and other accounting records of all internal revenue taxes of Enviroaire for the period from January 1, 2007 to December 31, 2007. The LOA was received by a certain Leinor Monica on June 6, 2012.[10]

---

[2] Certificate of Incorporation, Exhibit P-4, CTA Docket, pp. 1063-1078.
[3] Exhibit P-9, CTA Docket, p. 1094.
[4] Exhibits P-10 to P-23; CTA Docket, pp. 1095-1108.
[5] Exhibits P-24 and P-25, CTA Docket, pp. 1109 and 1111.
[6] Exhibit P-24-a, and P-25-a, CTA Docket, pp. 1110 and 1112.
[7] Exhibit P-29, CTA Docket, pp. 1044-1052, 1045.
[8] Exhibit P-1, CTA Docket, p. 1054.
[9] Exhibit P-2 and A-2; CTA Docket, p. 1053.
[10] Exhibit P-3, A-3; CTA Docket, p. 1061.

After investigation, Jose P. Pazcoguin, Jr. and Enrico L. Omaña executed a Complaint-Affidavit dated June 7, 2012, initiating a criminal complaint against Enviroaire and its responsible corporate officers, Tyrone N. Ong and Arlene Chua, President and Treasurer, respectively, for willful attempt to evade or defeat the payment of Income Tax for taxable year 2007, and for willful failure to supply correct and accurate information for taxable year 2007, in violation of Sections 254 and 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended.[11] In a Letter dated June 7, 2012, the then CIR Jacinto-Henares referred to the Secretary of Justice for preliminary investigation and filing of the appropriate information in court, the said Complaint-Affidavit of Pazcoguin and Omaña.[12]

On June 10, 2014, the prosecution filed an Information dated April 14, 2014 against accused Tyrone N. Ong and Arlene Chua, President and Treasurer, respectively, of Enviroaire for the crime of "Failure to Supply Correct and Accurate Information" for taxable year 2007 in violation of Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended, the accusatory portion of which reads:

> "That on or about April 15, 2008, in the city of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the Accused TYRONE N. ONG and ARLENE CHUA, being the President and Treasurer, respectively, of ENVIROAIRE, INC., a domestic corporation registered as a taxpayer with Revenue District Office (RDO) No. 41, Mandaluyong City under BIR Tax Identification No. 218-084-255-00, and at the time required by law, rules and regulations to pay taxes for the said corporation, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously fail to supply correct and accurate information in the corporation's Income Tax Return and pay the corresponding tax due thereon, as said accused did not declare ENVIROAIRE, INC.'s gross sales and income for taxable year 2007 by not including the aggregate amount of Php225,711,203.23 as shown in Official Receipt Nos. 7760 and 7761 issued by ENVIROAIRE, INC. to PNP Finance Center, in order to conceal ENVIROAIRE, INC.'s true income to the **damage and prejudice of the government in the amount of Seventy Nine Million Three Hundred Eighty Three Thousand Two Hundred Twenty Six Pesos and Ten Centavos (Php79,383,226.10), more or less for taxable year 2007, exclusive of surcharges and interests.**
>
> CONTRARY TO LAW." *(Boldfacing and underscoring supplied)*

---

[11] CTA Docket, pp. 345-354.
[12] CTA Docket, pp. 342-343.

In a Resolution dated February 3, 2015, the Court's Third Division found probable cause to hold the two accused for trial and ordered the issuance of warrants of arrest against them.[13]

The prosecution filed its Motion for Leave of Court to File Amended Information (with attached Amended Information dated January 12, 2015) on February 24, 2015 praying for leave to file an Amended Information to implead Enviroaire of which the two accused are the responsible corporate officers.[14]

In a Resolution dated June 23, 2015, the Court's Third Division[15] ruled that the prosecution, as a matter of right, may amend the Information as both of the accused are yet to be arraigned; nonetheless, it directed the prosecution to correct or amend the Information specifying the amount of damage sustained by the Republic as it held that the phrase *"more or less"* in the Information dated April 14, 2014 as well as the Amended Information filed on February 24, 2015 casts cloud on the amount involved in the case.[16]

In line with the June 23, 2015 Resolution, the prosecution filed its Compliance on July 14, 2015 praying that the Court allow it to file the Second Amended Information.[17] The prosecution's Compliance was noted and the Second Amended Information dated July 13, 2015 was admitted in the Court Third Division's Order dated July 21, 2015.[18]

The Second Amended Information[19] reads:

> The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses Tyrone N. Ong and Arlene Chua, President and Treasurer, respectively, of ENVIROAIRE, INC. of the crime of "Failure to Supply Correct and Accurate Information" in its Annual Income Tax Return for taxable year 2007 in violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
>
> > "That on or about April 15, 2008, in the city of Mandaluyong, Philippines, and within the jurisdiction of

---

[13] CTA Docket, pp. 369-375.
[14] CTA Docket, pp. 387-393.
[15] Composed of Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.
[16] CTA Docket, pp. 483-485.
[17] CTA Docket, pp. 486-491.
[18] CTA Docket, p. 492.
[19] CTA Docket, pp. 488-491.

> this Honorable Court, the Accused TYRONE N. ONG and ARLENE CHUA, being the President and Treasurer, respectively, of ENVIROAIRE, INC., a domestic corporation registered as a taxpayer with Revenue District Office (RDO) No. 41 - Mandaluyong City under BIR Tax Identification No. 218-084-255-00, and at the time required by law, rules and regulations to pay taxes for the said corporation, in conspiracy with one another, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the corporation's Annual Income Tax Return and pay the corresponding tax due thereon, as said accused did not declare ENVIROAIRE, INC.'s gross sales and income for taxable year 2007 by not including the aggregate amount of Php225,711,203.23 as shown in Official Receipt Nos. 7760 and 7761 issued by ENVIROAIRE, INC. to PNP Finance Center, in order to conceal ENVIROAIRE, INC.'s true income **to the damage and prejudice of the government in the amount of Seventy-Nine Million Three Hundred Eighty-Three Thousand Two Hundred Twenty-Six Pesos and Ten Centavos (Php79,383,226.10), for taxable year 2007, exclusive of surcharge and interests.**
>
> CONTRARY TO LAW." *(Boldfacing supplied)*

Both accused appeared and submitted their persons to the jurisdiction of the Court, and posted the required bond for their provisional liberty.[20]

When arraigned under the Second Amended Information on June 1, 2016, the two named accused, duly assisted by their counsel, pleaded "NOT GUILTY" of the crime charged.[21]

Plaintiff filed its Pre-Trial Brief on June 20, 2016,[22] an Amended Pre-Trial Brief on July 25, 2016,[23] and another Amended Pre-Trial Brief on March 23, 2017.[24] Accused filed their Pre-Trial Brief on July 12, 2017.[25]

---

[20] CTA Docket, p. 775.
[21] CTA Docket, pp. 778 and 790.
[22] CTA Docket, pp. 793-795.
[23] CTA Docket, pp. 827-832.
[24] CTA Docket, p. 950-954.
[25] CTA Docket, pp. 1006-1009.

Pre-Trial Conference was held on July 12, 2017,[26] and the Court issued a Pre-Trial Order on September 5, 2017.[27]

Trial ensued where the prosecution presented its witnesses, Revenue Officer (RO) Enrico L. Omaña, and Atty. Alma G. Cagat-Cagat on September 13, 2017 and December 6, 2017, respectively.[28]

RO Enrico L. Omaña, a Special Investigator I at BIR Regional Investigation Division (RID), Revenue Region 5, Caloocan City, but previously assigned in 2001 to 2007 at BIR RID Revenue Region No. 7, Quezon City, testified by way of Judicial Affidavit which he identified during the hearing held on September 13, 2017.[29] He stated therein the following:

> (i) Enviroaire was investigated because of the Subpoena Duces Tecum issued by the Commission on Audit, ordering the Revenue District Officer of RDO 41-Mandaluyong City to issue a certification as to whether the amounts of P85,179,953.22 under OR No. 7760 dated January 17, 2008, and P140,531,250.01 under OR No. 7761 dated January 17, 2008 were included in the gross sales of Enviroaire in its tax returns for years 2007 and 2008;
>
> (ii) Ms. Isabel A. Paulino, the Revenue District Officer of RDO 41-Mandaluyong City, issued a Certification stating that Enviroaire has declared gross sales amounting to P12,611,752.93 for taxable year 2008 per ITR filed on April 14, 2008 and that the aggregate amount of P225,711,203.23 stated in OR Nos. 7760 and 7761 was not included in Enviroaire declared gross sales;
>
> (iii) He and Jose Pazcoguin, Jr. were authorized to examine Enviroaire books of accounts and other accounting records for the period January 1, 2008 to December 31, 2008 per Letter of Authority No. 2011-2012-00000043 SN: eLA201100018415, and for the period January 1, 2007 to December 31, 2007 per Letter of Authority No. 2011-2012-00000046 SN: eLA201100018418 dated June 6, 2012;
>
> (iv) He went to the Securities and Exchange Commission and verified the existence and registration of Enviroaire as a domestic corporation, and requested copies of its Articles of Incorporation and General Information Sheet to find out the officers of the corporation;
>
> (v) In the course of their investigation, they requested from RDO Paulino certified true copies of Enviroaire 2007 Annual ITR (BIR

---

[26] CTA Docket, p. 1005.
[27] CTA Docket, pp. 1024-1032.
[28] CTA Docket, pp. 1130, 1153-1154.
[29] CTA Docket, pp. 1123 and 1130.

Form 1702) showing gross sales of P27,585,555.30 filed on April 15, 2008, its 2008 Annual ITR (BIR Form 1702) showing gross sales of P12,611,752.93 filed on April 14, 2009, and its 2007 and 2008 financial statements;

(vi) The names of Tyrone Ong and Arlene Chua with their respective positions in the company and their signatures are found on the page of Statement of Management's Responsibility for Financial Statements;

(vii) a Certification was issued by RDO Paulino certifying that Enviroaire with TIN 218-084-255-000 and with registered address at 140 Shaw Boulevard, Bagong Silang, Mandaluyong City is a registered VAT taxpayer of RDO No. 41-Mandaluyong City;

(viii) Enviroaire declared gross sales is P27,585,555.35 in 2007 and P12,611,752.93 in 2008;

(ix) Enviroaire substantially under-declared its sales since it only declared the amount of P27,585,555.30 when its total taxable gross sales per investigation is P228,232,274.03, which amount is arrived at when the unreported sales to PNP in the amount of P225,711,203.78 is added to the taxable income per ITR of P2,521,070.25;

(x) Enviroaire declared a tax payable of P645,866.90 for 2007 and P252,284.48 for 2008;

(xi) Fourteen (14) invoices were issued by Enviroaire to PNP showing its gross sales to the latter;

(xii) Director Boado provided them with certified photocopies of Enviroaire's OR No. 7760 dated January 17, 2008 [stating] the amount of P85,179,953.22, OR No. 7761 dated January 17, 2008 [stating] the amount of P140,531,250.01, duplicate copies of Check No. 457825 dated December 26, 2007 and Check No. 457991 dated December 27, 2007 issued by PNP to Enviroaire;

(xiii) After their investigation, they filed on June 7, 2012 a criminal complaint with the Department of Justice charging Enviroaire and its officers, Tyrone N. Ong as its President and Arlene Chua as its Treasurer for violation of Sections 254 and 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended;

(xiv) After filing the case, the case docket was forwarded to the Assessment Division for the preparation of assessment notice for the collection of deficiency internal revenue taxes of Enviroaire;

(xv) The Preliminary Assessment Notice (PAN) was issued on June 28, 2016, served by registered mail to Enviroaire registered addresses: No. 40 Shaw Boulevard, Bagong Silang, Mandaluyong City and 8/F Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City, and also mailed to accused's address on record: 1440 J. Abad Santos Street, Tondo, Manila;

> (xvi) The Final Assessment Notice and Formal Letter of Demand (FAN/FLD) was issued on July 26, 2016, and served by registered mail to Enviroaire's two registered addresses and accused's address on record; and,
>
> (xvii) Based on the FAN/FLD issued to Enviroaire for taxable year 2007, it is liable to pay P233,700,061.09 deficiency income tax and P60,348,900.87 deficiency value-added tax for taxable year 2007.[30]

On cross-examination, RO Omaña agreed that the ITR should be filed in 2009 as the receipts concern 2008. He said that the company accountant prepared the financial statements; Tyrone Ong and Arlene Chua, being the President and Treasurer, respectively, of the corporation, have to know and supply all the invoices they issued to their clients; he does not know who issued the receipt but it is under the name of Enviroaire; the *Subpoena Duces Tecum* issued by Director Boado of COA was issued to RDO Isabel Paulino and not to him; the FAN is dated July 26, 2016 and the assessment came from the Assessment Division; and a certain Susan Nace, the External Auditor of Enviroaire, was the one who prepared the financial statement through the records given to her by the officers of Enviroaire. He concluded that the two (2) accused gave the data to Susan Nace because of their position in the corporation.[31]

On re-direct examination, RO Omaña said that ORs were issued because Enviroaire received the amount from the PNP based on the checks issued by the Treasurer of the Philippines to Enviroaire; the checks were issued on December 26, 2007 and December 27, 2007 with the amounts of P85,179,953.22 and P140,531,250.01 to cover invoices relating to repair [works]; the date of the ORs is also the date the checks were received by Enviroaire; and Enviroaire did not file BIR Form 1905 for the closure of the company.[32]

Atty. Alma G. Cagat-Cagat, Associate Special Prosecution Officer II assigned at the Appellate Special Action Bureau of the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman, testified by way of Judicial Affidavit which she identified during the hearing held on December 6, 2017. She stated therein that: (i) she was designated as Officer-in-Charge (OIC) of the Records Division of the

[30] TSN Folder, September 13, 2017 Transcript of Stenographic Notes (TSN); CTA Docket, pp. 1476-1514.
[31] September 13, 2017 TSN, pp. 11-31; see also CTA Docket, pp. 1476-1514.
[32] September 13, 2017 TSN, pp. 31-37; CTA Docket, pp. 1476-1514.

OSP from January 30, 2014 to January 2, 2017 prior to her present assignment as Associate Special Prosecutor Officer II; (ii) she recalled having certified an invoice and an official receipt relative to Enviroaire; and, (iii) she identified Invoice No. ER-07-012 dated 27 December 2008 and OR No. 7761 dated January 17, 2008 issued by Enviroaire.[33]

On cross-examination, Ms. Cagat-Cagat testified that the original copy of the invoice and OR were in her possession when she certified the photocopy; she has no knowledge if the documents were provided by the accused to the BIR; as far as she is concerned, the documents were brought to her office and she kept them in her custody.[34]

The testimony of the prosecution's intended third witness, in the person of **Atty. Joffre Gil C. Zapata**, was dispensed with during the March 21, 2018 hearing in view of the stipulations made by the parties.[35] They stipulated that (i) Atty. Zapata is the custodian of the originals of the documents marked for the prosecution as Exhibits "P-11" to "P-25"; (ii) Atty. Zapata issued certified true photocopies of the said documents to the BIR; (iii) Atty. Zapata submitted the certified true photocopies of the subject documents to the BIR; and, (iv) Atty. Zapata has no personal knowledge of the criminal charges filed in this Court.

There being no other witness to present, the prosecution was granted a period of three (3) days or until March 24, 2018 within which to file its Formal Offer of Evidence.[36]

Prosecution filed its Formal Offer of Evidence[37] on March 22, 2018, offering in evidence its Exhibits P-1 to P-31-a, specifically described as follows:

Exhibit	Description
P-1	Subpoena Duces Tecum signed by Director Leonor D. Boado of the Fraud Audit and Investigation Office, Legal Services Sector of the Commission on Audit dated April 26, 2012
P-2	Revenue District Officer Isabel A. Paulino's Certification in response to the Subpoena of FAIO LSS COA

[33] CTA Docket, pp. 1145-1147.
[34] December 6, 2017 TSN, CTA Docket, pp. 1164-1165.
[35] CTA Docket, pp. 1322-1324.
[36] CTA Docket, pp. 1322-1323.
[37] CTA Docket, pp. 1341-1349.

P-3	Letter of Authority No. 211-2012-00046 SN:eLA201100018418 dated June 6, 2012 for taxable year 2007
P-4	Enviroaire, Inc.'s Certificate of Incorporation with the Securities and Exchange Commission (SEC) with Company Reg. No. A200204249 issued on March 13, 2002
P-4-a	Enviroaire, Inc.'s Articles of Incorporation
P-5	Enviroaire, Inc.'s General Information Sheet (GIS) for the year 2007 filed with the SEC on October 8, 2007
P-5-a	Name and position of Tyrone N. Ong as President of Enviroaire, Inc.
P-5-b	Name and position of Arlene Chua as CFO of Enviroaire, Inc.
P-6	Enviroaire, Inc.'s Annual Income Tax Return (BIR Form 1702) for taxable year 2007
P-7	Return Information on the Tax Return filed by Enviroaire, Inc. for taxable year 2008 as received by the BIR
P-8	Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
P-8-a	Name and position of Tyrone Ong as President in Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
P-8-b	Name and position of Arlene Chua as Treasurer in Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
P-9	Certification of then RDO Isabel A. Paulino dated May 15, 2012 that Enviroaire, Inc. is a registered VAT taxpayer
P-10	Invoice No. ER-07-012
P-11	Invoice No. ER-07-013
P-12	Invoice No. ER-07-014
P-13	Invoice No. ER-07-015
P-14	Invoice No. ER-07-016
P-15	Invoice No. ER-07-017
P-16	Invoice No. ER-07-018
P-17	Invoice No. ER-07-019
P-18	Invoice No. ER-07-020
P-19	Invoice No. ER-07-021
P-20	Invoice No. ER-07-022
P-21	Invoice No. ER-07-023
P-22	Invoice No. ER-07-024
P-23	Invoice No. ER-07-025

P-24	PNP Check No. 457825 dated December 26, 2007 pay to the order of Enviroaire, Inc. in the amount of Php85,179,953.22
P-24-a	Enviroaire, Inc.'s Official Receipt No. 7760 dated January 17, 2008 in the amount of Php85,179,953.22
P-25	PNP Check No. 457991 dated December 27, 2007 pay to the order of Enviroaire, Inc. in the amount of Php140,531,250.01
P-25-a	Enviroaire, Inc.'s Official Receipt No. 7761 dated January 17, 2008 in the amount of Php140,531,250.01
P-26	Preliminary Assessment Notice (PAN) with Details of Discrepancies dated June 28, 2016 issued to Enviroaire, Inc. for taxable year 2007
P-27	Formal Letter of Demand No. 041-B050-07 (50%) dated July 26, 2016 issued to Enviroaire, Inc. for taxable year 2007
P-28	Assessment Notice (FAN) for Income Tax (IT) for taxable year 2007
P-28-a	Assessment Notice (FAN) for Value-Added Tax (VAT) for taxable year 2007
P-29	Judicial Affidavit of Revenue Officer (RO) Enrico L. Omaña
P-29-a	Name and Signature of RO Enrico Omaña
P-31	Judicial Affidavit of Atty. Alma G. Cagat-Cagat – OIC Records Division, Office of the Special Prosecutor, Ombudsman
P-31-a	Name and Signature of Atty. Alma G. Cagat-Cagat

After accused filed their Comment/Opposition to the Formal Offer of Evidence on April 2, 2018,[38] the Court's Third Division issued a Resolution, dated April 30, 2018, admitting all the aforesaid pieces of exhibits offered by the prosecution.[39]

Accused filed their Motion for Leave to File Demurrer to Evidence on May 16, 2018,[40] which was granted by the Court's *Third Division* in a Resolution issued on July 2, 2018,[41] thereby granting them a non-extendible period of ten (10) days from notice to file a Demurrer to Evidence.[42] Having received the notice on July 5, 2018,[43] accused

---

[38] CTA Docket, pp. 1372-1391.
[39] CTA Docket, pp. 1400-1401.
[40] CTA Docket, pp. 1402-1406.
[41] CTA Docket, pp. 1451-1454.
[42] CTA Docket, p. 1454.
[43] CTA Docket, p. 1450.

timely filed their Demurrer to Evidence on July 6, 2018,[44] with plaintiff's Opposition thereto filed on July 11, 2018.[45]

Subsequently, in view of the reorganization of the three (3) divisions of the Court, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, the present case was transferred to this Division in the Order dated September 24, 2018.[46]

In a Resolution dated May 31, 2019, this Court denied the Demurrer to Evidence of the accused, holding that there exists a *prima facie* case against them, as there are competent and sufficient evidence that were admitted in evidence to sustain the proposition that they had committed the offense charged.[47]

Accused Ong and Chua filed their Motion for Reconsideration of the 31 May 2019 Resolution on June 17, 2019,[48] which was denied by this Court in the August 6, 2019 Resolution.[49]

Subsequently, accused presented their testimonial and documentary evidence.

Accused Tyrone N. Ong testified on September 25, 2019 by way of Judicial Affidavit,[50] where he stated therein, among others, the following:

> (i) He knows Enviroaire because he is the President of the company;
>
> (ii) He is the same Tyrone N. Ong that represents Enviroaire in this case;
>
> (iii) He is the President only in title but he really acts as a Public Relations Officer of the company. He meets and courts potential clients and builds a relationship with them and closes a deal;
>
> (iv) He does not handle the nitty gritty details of the legalities of the business deals;

---

[44] CTA Docket, pp. 1455-1470.
[45] CTA Docket, pp. 1598-1605.
[46] CTA Third Division Order, dated September 24, 2018.
[47] CTA Docket, pp. 2097-2107.
[48] CTA Docket, pp. 2108-2125.
[49] CTA Docket, pp. 2230-2231.
[50] CTA Docket, pp. 2254-2255.

(v) Enviroaire is a domestic corporation primarily engaged in the business of emission testing and supply of equipment and other related products, including parts and accessories. It is also engaged in the refurbishing of Light Armored Vehicles;

(vi) Enviroaire's contract with the PNP was to refurbish, a supply of services, and the goods were incidental to the service;

(vii) He is aware of this criminal case for an alleged tax evasion and failure to supply correct and accurate information in the income tax return, which was initiated by the Commission on Audit as there was an investigation on the refurbishing of the Light Armored Vehicles or tanks by the PNP;

(viii) He came to know of this case as he was informed by his previous lawyer that a complaint was filed with the Department of Justice;

(ix) He never received any Letter of Authority or request for conference from the BIR;

(x) He has no knowledge on whether other officers of the company ever received the Letter of Authority from the BIR. His wife, the co-accused in this case, did not receive any notice;

(xi) The BIR never communicated with him at any given point in time prior to filing the case with the DOJ;

(xii) The BIR never communicated with his wife. His wife is not involved with the operations or any part of this company. She was named as treasurer only by reason that she is his wife;

(xiii) Leinor Mojica, the one who received the Letter of Authority issued on June 6, 2012, is not an officer or authorized representative of Enviroaire, but she is a rank and file employee;

(xiv) BIR hastily filed the present case without conducting a formal investigation as the Letter of Authority was issued on 6 June 2012 and immediately thereafter, on 7 June 2012, BIR filed the present criminal complaint. The BIR proceeded to file the criminal complaint even before there was a final determination of Enviroaire's tax liability. Neither did they give them time to present documents nor allowed them to undergo a formal investigation;

(xv) Upon seeing the Complaint from the DOJ, he studied the allegations and it was during this point that he was shown copies of Sales Invoice ER 07-012, the Certification by RDO Paulino as well as the OR;

(xvi) The sales invoice indicates the year 2007 and such is not proof of payment or receipt of any payment;

(xvii) The OR No. 7760 was not issued in 2007 but issued on January 17, 2008;

> (xviii) RDO Paulino's Certification states that "this is to certify that Enviroaire has declared gross sales amounting to P12,611,752.93 for the taxable year 2008 per ITR (BIR Form 1702) filed April 14, 2008 and that the abovementioned ORs were not included in the latter's declared gross sales.", which is for year 2008, and not for 2007;
>
> (xix) He is sure that Enviroaire filed its ITR for taxable year 2007, but he is not familiar with its contents.
>
> (xx) The finance matters are handled by someone else. Since Enviroaire is a special project company, they do not have a full time finance officer; they only ask the assistance of a finance officer from another company;
>
> (xxi) The Finance Officer prepares the ITR of Enviroaire, and he made no supervision as said officer worked on Enviroaire matters independent of anyone;
>
> (xxii) He does not examine or review the ITR of Enviroaire because it is the Finance Officer who is in charge thereof;
>
> (xxiii) He did not give instructions to the Finance Officer not to file the ITR for 2007, nor underdeclare the income of Enviroaire for 2007; the Finance Officer did not advise him not to file the ITR for 2007, nor underdeclare the income of Enviroaire for 2007;
>
> (xxiv) His wife has zero involvement in the company; and
>
> (xxv) Enviroaire is a special project company and it is currently non-operational as there are no new special projects at the moment.[51]

On cross-examination, accused Ong said that Leinor Mojica is assigned at the front desk, but she is not authorized to receive documents addressed to him or to the corporation; Sales Invoice No. ER07-012, OR Nos. 7760 and 7761 were issued by Enviroaire; he is not in a position to respond to the question of whether Enviroaire issued other invoices in connection with this transaction as he is not into the nitty gritty of issuing the invoices.[52]

On re-direct examination, accused Ong testified that he has no personal knowledge of the issuance of any sales invoices or official receipt by Enviroaire.[53]

---

[51] CTA Docket, pp. 2237-2249.
[52] September 25, 2019 TSN, pp. 17-24
[53] September 25, 2019 TSN, p. 24.

Responding to the Court's clarificatory question, accused Ong said that he presumed that the Finance Officer is also the one who signed the income tax return of Enviroaire,[54] and for the particular ITR referred to in his answer to question no. 41 of his Affidavit, the same refers to Ms. Susan Nase.[55]

Accused Arlene Chua also testified on November 27, 2019 by way of Judicial Affidavit, which she stated therein the following:

> (i) She knows accused, Enviroaire, and she is the same Arlene Chua who represents Enviroaire in this case;
>
> (ii) She is designated as Treasurer of the company. Her being a Treasurer is only in title but not in function. She does not really do anything for the company;
>
> (iii) She does not have any participation or involvement in the operations of the company, and in its finances. She does not supervise the operations or finances of the company;
>
> (iv) She does not receive any salary, dividends, or any kind of money at all from Enviroaire;
>
> (v) She has no personal information or knowledge if Enviroaire filed its ITR for taxable year 2007;
>
> (vi) She has no personal information or knowledge as to who is in charge of the financial aspect of the business; and
>
> (vii) She has not given instructions to any person in the company not to file the ITR for 2007 or to underdeclare the income of Enviroaire for 2007.[56]

In response to the Court's clarificatory questions, accused Chua stated that she is also the Treasurer in another family business, but she does not know her duties as her position is only in title.[57]

Thereafter, defense counsel made an oral offer of the following documentary exhibits, viz.:

Exhibit	Description
A-1	Judicial Affidavit of Tyrone N. Ong, dated September 20, 2019

---

[54] September 25, 2019 TSN, p. 25.
[55] September 25, 2019 TSN, p. 27.
[56] CTA Docket, pp. 2273-2279.
[57] November 27, 2019 TSN, p. 8.

A-1-A	Signature of Tyrone Ong
A-2	Certification of Revenue District Offer Isabel A. Paulino
A-3	Letter of Authority issued by Commissioner Kim Henares
A-4	Enviroaire, Inc.'s Sales Invoice No. ER-07-012
A-5	Enviroaire, Inc.'s Official Receipt No. 7760
A-6	Enviroaire, Inc.'s Official Receipt No. 7761
A-7	Judicial Affidavit of Arlene Chua
A-7-A	Signature of Arlene Chua

The aforesaid exhibits were all admitted during the hearing held on November 27, 2019.[58]

Accused filed their Memorandum on December 9, 2019,[59] while plaintiff failed to file its memorandum, as directed by this Court in the November 27, 2019 Order.

Hence, this Court's decision.

ISSUE

Whether or not accused Tyrone N. Ong and Arlene Chua are guilty of the offense charge for violation of Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended, for alleged failure to supply correct and accurate information in the Annual ITR of Enviroaire for taxable year 2007.

THE COURT'S RULING

Jurisdiction of the Court of Tax Appeals (CTA) over cases involving criminal offenses

At the outset, the Court finds it imperative to make a determination of its jurisdiction over the present case. As earlier mentioned, the Court's Third Division, in a Resolution dated June 23, 2015, directed the prosecution to correct or amend the Information dated April 14, 2014 and the Amended Information dated January 12, 2015 considering that the phrase *"more or less"* as stated therein casts

---

[58] November 27, 2019 TSN, p. 16; November 27, 2019 Order, CTA Docket, pp. 2291-2292.
[59] CTA Docket, pp. 2293-2319.

doubt on the amount involved in the case. Thus, the Second Amended Information dated July 13, 2015 was filed by the prosecution on July 14, 2015.

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) xxx;
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (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 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." *(Boldfacing supplied)*

Section 3(b)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

CA

> (1) 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, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and
>
> xxx." *(Boldfacing supplied)*

After a careful perusal of the Second Amended Information, this Court finds that the Second Amended Information suffers from fatal infirmity that deprived the Court of jurisdiction to take cognizance of the case. To be sure, a plain reading of the Second Amended Information discloses its failure to allege facts sufficient to qualify the present case as among those falling within the exclusive jurisdiction of the CTA.

There is no denying that this Court has exclusive original jurisdiction involving criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs **provided that the principal amount of <u>taxes and fees</u>, exclusive of charges and penalties, claimed is at least P1,000,000.00**. On the other hand, where the principal amount of **<u>taxes and fees</u>**, exclusive of charges and penalties, claimed is less than P1,000,000.00 or where there is no specified amount claimed, the case shall be tried by the regular courts and the jurisdiction of this Court shall be appellate.

The Second Amended Information dated July 13, 2015 is totally silent on the **principal amount of taxes and fees, exclusive of charges and penalties**, which the government claims against accused Ong and Chua. The Second Amended Information alleges that:

(1) Accused Ong and Chua willfully, unlawfully and feloniously failed to supply correct and accurate information in Enviroaire's Annual ITR and to pay the corresponding tax due thereon;

(2) Accused Ong and Chua did not declare Enviroaire's gross sales and income for taxable year 2007 by not including the aggregate amount of P225,711,203.23 as shown in OR Nos. 7760 and 7761 issued by Enviroaire to PNP Finance Center in order to conceal Enviroaire's true income;

(3) Accused Ong and Chua's aforesaid failure resulted **to the <u>damage and prejudice</u> of the government in the amount of Seventy-Nine Million Three Hundred Eighty-Three Thousand Two Hundred Twenty-Six Pesos and Ten Centavos (P79,383,226.10), for taxable year 2007, exclusive of surcharge and interests.**

It is at once glaring that the nature and form of the damage and prejudice that the government suffered are just too ambiguous to qualify it as referring to the "principal amount of taxes and fees" which the government claims against the accused.

To vest jurisdiction upon this Court, a vital allegation in the Second Amended Information, that is – - that the <u>"principal amount of taxes and fees"</u> is at least P1,000,000.00, exclusive of charges and penalties - - must be unequivocal and unmistakable. Otherwise stated, while the Second Amended Information quantified the damage and prejudice the government suffered as amounting to P79,383,226.10, there is nothing therein that states the <u>principal amount of tax liability of Enviroaire for taxable year 2007.</u>

It is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.[60] To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed.[61] **Evidence presented could not cure the defect in the information.**[62] Thus, the allegation in the Second Amended Information shall be the basis in determining whether this Court has jurisdiction over the case.

In *Allen A. Macasaet, et al. vs. The People of the Philippines and Joselito Trinidad,*[63] the Supreme Court in *esse* declared that the failure of an Information to allege matters that specifically vest jurisdiction upon the court with which it is filed effectively deprives the court of jurisdiction to take cognizance of the case, *viz.*:

---

[60] Solemnidad M. Buaya vs. The Honorable Wenceslao M. Polo, Presiding Judge, Branch XIX, Regional Trial, Court of Manila and the Country Bankers Insurance Corporation, G.R. No. L-75079 January 26, 1989, citing Balite v. People, L-21475, Sept. 30,1966 cited in People v. Masilang, 142 SCRA 680.
[61] Id., citing Villanueva v. Ortiz, et al., L-15344, May 30, 1960, 108 Phil, 493.
[62] Francisco I. Chavez vs. Court of Appeals, G.R. No. 125813, February 6, 2007.
[63] G.R. No. 156747, February 23, 2005.

> "Jurisdiction has been defined as 'the power conferred by law upon a judge or court to try a case the cognizance of which belongs to them exclusively' and it constitutes the basic foundation of judicial proceedings. Xxx.
>
> xxx
>
> > Xxx, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.
>
> xxx
>
> In the case at bar, private respondent was a private citizen at the time of the publication of the alleged libelous article, hence, he could only file his libel suit in the City of Manila where Abante was first published or in the province or city where he actually resided at the time the purported libelous article was printed.
>
> **A perusal, however, of the information involved in this case easily reveals that the allegations contained therein are utterly insufficient to vest jurisdiction on the RTC of Quezon City.** Other than perfunctorily stating Quezon City at the beginning of the information, the assistant city prosecutor who prepared the information did not bother to indicate whether the jurisdiction of RTC Quezon City was invoked either because Abante was printed in that place or private respondent was a resident of said city at the time the claimed libelous article came out. **As these matters deal with the fundamental issue of the court's jurisdiction, Article 360 of the Revised Penal Code, as amended, mandates that either one of these statements must be alleged in the information itself and the absence of both from the very face of the information renders the latter fatally defective.** Sadly for private respondent, the information filed before the trial court falls way short of this requirement. The assistant city prosecutor's failure to properly lay the basis for invoking the jurisdiction of the RTC, Quezon City, effectively denied said court of the power to take cognizance of this case." *(Boldfacing supplied)*

Applying *Macasaet*, matters dealing with the issue of the CTA's jurisdiction must be alleged in the Information itself. Since Section 7(b)(1) of RA No. 1125, as amended, sets forth this Court's jurisdiction based on the **principal amount of taxes and fees, exclusive of charges and penalties claimed**, such fact must be alleged in the Information, lest the same would be fatally infirmed. As afore-discussed, the Second Amended Information involved in the present controversy is wanting of the appropriate allegation anent the jurisdictional amount - - the principal amount of tax - - that could have vested upon this Court jurisdiction over the criminal case.

While defects in an information may be cured by amendment pursuant to Section 14, Rule 110 of the Rules of Court (ROC),[64] not all defects in an information can be cured. Before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed, except if the same is beneficial to the accused.[65] **The substantial matter in a complaint or information is the recital of facts constituting the offense charged and <u>determinative of the jurisdiction</u> of the court. All other matters are merely of form.**[66]

In the case at bar, accused Ong and Chua were arraigned and both entered a "not guilty" plea. With their arraignment, any subsequent amendment of the Second Amended Information to specify the principal amount of tax is proscribed, more so, any amendment that relates to the Court's jurisdiction.

In *Victor C. Agustin vs. Hon. Fernando Vil Pamintuan,*[67] a case which had its roots in four (4) criminal cases for libel, the Supreme Court declared that amendments of the information to vest jurisdiction upon a court is not permissible, *viz.*:

---

[64]Section 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (Boldfacing supplied)

[65] Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda, G.R. No. 182677, August 3, 2010.

[66] Leonarda Alameda vs. Hon. Onofre A. Villaluz, G.R. No. L-31665, August 6, 1975.

[67] G.R. No. 164938, August 22, 2005.

"We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. **Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.**" *(Boldfacing supplied)*

There being no allegation in the Second Amended Information on the jurisdictional amount of tax liability of Enviroaire, specifically that the principal amount of its income tax liability for 2007 is at least P1,000,000.00, this Court finds the Second Amended Information substantially defective as to vest jurisdiction upon this Court.

In the absence of the required information in the Second Amended Information as to the kind and amount of basic tax that the goverment claims against accused Ong and Chua, **the Court is constrained to dismiss the case for lack of jurisdiction.**

Elements of the criminal offense charged

Even assuming that the Court has jurisdiction to take cognizance of the case, the evidence presented by the prosecution failed to prove the guilt of accused Ong and Chua beyond reasonable doubt.

As oft-repeated, accused Ong and Chua, President and Treasurer, respectively, of Enviroaire are accused of the crime of violation of Section 255 of the NIRC of 1997, in relation to Sections 253 and 256 of the same Code, for alleged failure to supply correct and accurate information in Enviroaire's Annual ITR for taxable year 2007, particularly, for not declaring Enviroaire's gross sales and income for taxable year 2007 in the aggregate amount of P225,711,203.23 based on OR Nos. 7760 and 7761 issued by Enviroaire to PNP Finance Center.

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

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

gy

> **<u>correct and accurate information</u>, 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 and underscoring supplied)*

Parenthetically, to sustain a conviction for the offense of "*Failure to Supply Correct and Accurate Information*" under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution beyond reasonable doubt:

1. A person is required under the NIRC or its rules and regulations to supply correct and accurate information in the return;

2. There is failure to supply the correct and accurate information in the return at the time required by law or rules and regulations; and

3. **The failure to supply correct and accurate information in the return is willful**.

The burden is upon the prosecution to establish by proof beyond reasonable doubt each of the aforesaid elements. The absence of any of the enumerated elements warrants the exoneration of the accused.

In the case at bar, evidence is wanting on the third element.

Requirement that the failure to supply correct and accurate information in the return was willfully done by the corporation through its officers who were responsible therefor

The word "willful" sometimes means little more than intentionally or designedly, yet it is more frequently understood to extend a little further and approximate the idea of the milder kind of legal malice; that is, it signifies an evil intent without justifiable excuse. In one case it was said to mean, as employed in a statute in contemplation, "wantonly" or "causelessly;" in another, "without reasonable grounds to believe the thing lawful." And Shaw, C. J., once said that ordinarily in a statute it means "not merely 'voluntarily' but with a bad purpose; in other words, corruptly."[68]

The concept of "willful" in relation to violation of the NIRC of 1997, as amended, has been elaborated in ***People of the Philippines vs. Dimson***,[69] *viz.:*

> "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.
>
> xxx xxx xxx
>
> 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, in tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty.

Indeed, "willfulness" connotes the existence of "knowledge" and "voluntariness," with the specific intent to do something the law forbids,

---

[68] The United States vs. Ah Chong, G.R. No. L-5272, March 19, 1910.
[69] CTA EB Crim. Case No. 033, September 21, 2015.

or with the specific intent to fail to do something that the law requires to be done; that is to say, with bad purpose to either disobey or disregard the law. The element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.[70]

It is the position of accused Ong and Chua that there was neither a requirement nor an obligation on Enviroaire's part to declare the sales to PNP in the amount of P239,901,460.00 in its Annual ITR for 2007 as payments for said sales were not actually or constructively received by Enviroaire during the taxable year 2007.[71] They believed that the failure of Enviroaire's responsible officers to declare the aforesaid sales should not be regarded as willful and deliberate considering that they merely relied on Section 44 of the NIRC of 1997, as amended, which provides **that the amount of all items of gross income shall be included in the gross income for the taxable year in which <u>received</u> by the taxpayer.**

Accused Ong and Chua also emphasize that they were both categorical in denying that they had a hand in the preparation of Enviroaire's 2007 Annual ITR; neither did they instruct any person to underdeclare Enviroaire's income. And these testimonies remain unrebutted.

While Enviroaire's 2007 Annual ITR may not have reflected correctly and accurately the income Enviroaire derived during the said year, the same is not sufficient to adjudge accused Ong and Chua as criminally liable for an alleged failure to supply correct and accurate information in Enviroaire's 2007 Annual ITR.

Interestingly, there is nothing on record to show that Enviroaire - - the corporate taxpayer - - was ever charged and found guilty of failure to supply correct and accurate information. Yet, the culpability of responsible officers of a corporate entity is dependent upon the liability of the corporation itself as the taxpayer. *Sans* the corporate taxpayer itself being held liable, its officers cannot assume a liability that does not exist.

---

[70] People of the Philippines vs. Judy Anne Santos y Lumagui, CTA Crim. Case No. O-012, January 16, 2013.
[71] Memorandum (for Accused), CTA Docket, pp. 2293-2319, 2299.

Section 256, in relation to Section 253, of the NIRC of 1997, as amended, specify the respective penal liability of a corporate entity on one hand, and its officers on the other hand, in cases where the offender-taxpayer is a corporation. Jointly read, it is the prior conviction of the corporation that triggers the imposition of penalty upon its corporate officers, *viz.*:

> "**SEC. 256. *Penal Liability of Corporations.*** - Any **corporation**, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, **upon conviction** for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)." *(Boldfacing and underscoring supplied)*
>
> xxx
>
> "**SEC. 253. *General Provisions.* -**
>
> (a) Any **person convicted** of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> xxx
>
> (d) In the case of associations, partnerships or corporations, the **penalty shall be imposed** on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.
>
> xxx." *(Boldfacing and underscoring supplied)*

Truth to tell, it is the conviction of a corporate entity that triggers the imposition of penalty upon its responsible officers. While Enviroaire is named as accused in the title of this case per the Second Amended Information, the cause of action, however, as contained in the accusatory portion, is directed only against accused Ong and Chua as President and Treasurer, respectively, of Enviroaire. Hence, this Court has no jurisdiction to render a judgment against Enviroaire as it is not an accused in the case at bar.

Of course, there is a view that a corporation cannot be charged and convicted as it cannot be "imprisoned". This is wrong. *Alfredo Ching vs. The Secretary of Justice, et.al*[72] gives the answer:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, **a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.**" *(Boldfacing and underscoring supplied)*

At any rate, Enviroaire's 2007 Annual ITR was not signed by either accused Ong or Chua. The prosecution likewise failed to present evidence, direct or circumstantial, to prove that accused Ong and Chua prepared and filed Enviroaire's 2007 Annual ITR or, at the very least, ordered the non-declaration of the sales to PNP in Enviroaire's 2007 Annual ITR. The mere fact that accused Ong and Chua hold the positions of President and Treasurer of Enviroaire, respectively, does not give rise to a logical presumption that they themselves prepared and filed Enviroaire's 2007 Annual ITR.

Section 52 (A) of the NIRC of 1997, as amended, clearly recognizes that other principal officers may render and file a corporation's income tax return, *viz.*:

> "SEC. 52. Corporation Returns. —
>
> (A) Requirements. — Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice-president **or other principal officer**, and shall be sworn to by such officer and by the treasurer or assistant treasurer." *(Boldfacing supplied supplied)*

Indeed, it would be the height of injustice for officers of a corporation to be held criminally liable for violation of the provision of the NIRC of 1997, as amended, on the sole basis of their positions in the corporation, without any proof that they themselves are the officers **responsible for the commission of the crime**.

---

[72] G. R. No. 164317, February 6, 2006.

The prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for the crime or for any other crime necessarily included therein. The prosecution must prove the participation of the accused in the commission of the offense and must rely on the strength of its own evidence, and not upon the weakness of the evidence of the accused. The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution guarantees. Stated differently, the weakness of the defense evidence is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[73]

In the case at bar, considering that there is reasonable doubt on accused Ong and Chua's involvement in the preparation and filing of Enviroaire's 2007 Annual ITR, both accused Ong and Chua should be acquitted of the crime charged.

Civil Liability

Section 7(b)(1) of RA No. 1125, as amended, states that "[a]ny provision of law or 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 shall be 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."

Civil liability arising from obligation to pay tax under the NIRC of 1997, as amended

Records disclose that the Formal Letter of Demand (FLD) with Details of Discrepancies dated July 26, 2016[74] demanded from Enviroaire the payment of deficiency income tax and value-added tax

[73] Patula v. People, G.R. No. 164457, April 11, 2012.
[74] CTA Docket, pp. 1117 -1120.

for taxable year 2007 within the time shown in the allegedly enclosed assessment notice. The last paragraph of the FLD reads:

> "In view thereof, you are hereby requested to pay your aforesaid deficiency tax liabilities in an authorized agent bank in which you are enrolled x x x **within the time shown in the enclosed assessment notice**." *(Boldfacing supplied)*

A perusal of the Assessment Notices,[75] enclosed to the FLD, reveals that the spaces for the due date were conspicuously left blank or unaccomplished.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[76] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
>
> xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxx xxx." (Boldfacing and underscoring supplied)

---

[75] CTA Docket, pp. 1121-1122.
[76] G.R. No. 128315, June 29, 1999.

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.,***[77] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (Boldfacing supplied)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. No assessment can be regarded as valid absent a specific date or period within which the alleged tax liabilities must be settled or paid by the taxpayer.

---

[77] G.R. No. 215957, November 9, 2016.

In sum, the assessment in this case, being void, bears no fruit[78] and may be slain at sight. Needless to say, a void assessment cannot be used as basis in collecting deficiency income tax from Enviroaire.

Civil liability arising from the criminal violation of the NIRC of 1997, as amended

Even assuming that the assessment issued against Enviroaire is valid, still, accused Ong and Chua may not be held civilly liable. For one, the prosecution miserably failed to prove that accused Ong and Chua had a hand in the criminal violation committed by Enviroaire. To reiterate, evidence is wanting of the fact upon which the civil liability may arise.[79] For another, the civil liability that is deemed instituted with the criminal case is not the deficiency tax liability contained in an assessment.

In ***Gaw vs. Commissioner of Internal Revenue***,[80] the Supreme Court elucidated on the nature of civil liability arising from a criminal violation of the NIRC of 1997, as amended, *viz.:*

> "The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion
>
> Rule 9, Section 11 of A.M. No. 05-11-07-CTA, 43 otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:
>
>> 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.
>
> Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam*, is deemed instituted upon the filing of the criminal action.

---

[78] Metro Star Superama, Inc. vs. Commissioner of Internal Revenue, G.R. No. 185371, December 8, 2010.
[79] Section 2, Rule 120, Rules of Court.
[80] G.R. No. 222837, July 23, 2018.

Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

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.

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.**

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 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 <u>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</u>. 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. <u>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</u> that could be wiped out by the judicial declaration of non-existence of the criminal acts charged**. x x x. (Citations omitted and emphasis ours)

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 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 and emphasis ours)
>
> Xxx. *(Boldfacing and underscoring supplied)*

Since the obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, the same is not deemed instituted in the criminal case.

Considering that the Court has not acquired jurisdiction over the person of Enviroaire, as it is not an accused in the present case, no civil action against it pursuant to Section 253(e) of the NIRC of 1997, as amended, is deemed instituted in this case.

WHEREFORE, premises considered, the present case is **DISMISSED** for lack of jurisdiction.

Moreover, even assuming that the Court has jurisdiction over the case, accused **Tyrone N. Ong** and **Arlene Chua** are **ACQUITTED** of the offense charged in CTA Crim. Case No. O-407 for failure of the prosecution to prove their guilt beyond reasonable doubt, without any civil liability.

The respective cash bail bonds of the accused are hereby **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(Inhibited)	
ESPERANZA R. FABON-VICTORINO	**CATHERINE T. MANAHAN**
Associate Justice	Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice