REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NOS. O-375, O-376, O-377, O-378

-versus-

Members:

BAUTISTA, *Chairperson;*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

CONSTANTINO T. CASTILLO III,
Accused.

Promulgated:
FEB 1 4 2018
1:32 a.m.

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RESOLUTION

For resolution is the "Consolidated Demurrer to Evidence"[1] filed by accused Constantino T. Castillo III (accused Castillo), praying that the Demurrer to Evidence be granted and that the cases against him be dismissed.

The plaintiff filed its "Comment/Opposition (To Accused's Demurrer to Evidence)" on September 29, 2017.[2]

ANTECEDENTS

Accused was charged with the crime of violations of Sections 254 and 255 of the 1997 National Internal Revenue Code (NIRC), as amended, allegedly committed in the following Informations:

Criminal Case No. O-375:

> "That on or about April 2010, 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 his annual income tax return did, then and there, wilfully, unlawfully and feloniously attempt to evade

[1] Docket, pp. 1340-1357.
[2] Ibid. pp. 1363-1367.

and defeat tax, as said accused did not declare all his income for taxable year 2009, which resulted to a basic deficiency income tax of Four Million Eight Hundred Seventy One Thousand Three Hundred Fifty Nine Pesos and Ninety Four Centavos (P4,871,359.94), more or less, for taxable year 2009, exclusive of surcharge and interest, to the damage and prejudice of the government of the Republic of the Philippines.

CONTRARY TO LAW."

<u>Criminal Case No. O-376:</u>

"That on or about April 2004, 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 his annual income tax return did, then and there, wilfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused did not declare any income for taxable year 2003 which resulted to a basic deficiency income tax of Three Million Three Hundred Twenty Five Thousand Pesos (P3,325,000.00), more or less, for taxable year 2003, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

<u>Criminal Case No. O-377:</u>

"That on or about April 2004, 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 his annual income tax return for taxable year 2003 did, then and there, wilfully, unlawfully and feloniously fail to file his annual income tax return and pay the corresponding tax for taxable year 2003, 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 Three Million Three Hundred Twenty Five Thousand Pesos (P3,325,000.00), as basic income tax deficiency, exclusive of interests and surcharges.

CONTRARY TO LAW."

<u>Criminal Case No. O-378:</u>

> "That on or about April 2010, 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 his annual income tax return for taxable year 2009 did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in his annual income tax return and pay the corresponding tax for taxable year 2009, 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 Four Million Eight Hundred Seventy One Thousand Three Hundred Fifty Nine Pesos and Ninety Four Centavos (P4,871,359.94), as basic income tax deficiency, exclusive of interests and surcharges.
>
> CONTRARY TO LAW."

During the arraignment,[3] accused assisted by his counsel, entered a plea of not guilty to the crimes charged.

These criminal cases were ordered consolidated in the Resolution dated May 22, 2014 for Criminal Case Nos. O-375, O-377 and O-358 and Resolution dated September 2, 2015 for Criminal Case No. O-376.

The Pre-trial Conference of these cases was held on October 14, 2015. The Court issued a Pre-Trial Order on November 16, 2015.[4]

During trial, the prosecution presented Revenue Officer Josephine D. Duran, Assistant Regional Director Clavelina S. Nacar, Revenue Officer Socrates O. Regala as witnesses to establish the cases against accused.

On May 5, 2017, the plaintiff filed a Motion for Stipulation moving for the waiver of the presentation of its remaining witnesses namely, Daniel G. Encina, Dominiciana Atreto, Cesar Charlie C. Lim, Albert T. Quilala, Myrla Melad Bajar, Beneroso E. Bajar, Alejandro T. Polca, Atty. Manuel S. Padolina, and Atty. Rina S. Valdez-Cruz.

During the hearing on May 10, 2017, the accused agreed with the proposals stated in the plaintiff's Motion for Stipulation filed on May 5, 2017, concerning the testimonies of plaintiff's witnesses. However, accused counter-

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[3] On December 3, 2014 for Criminal Case Nos. O-375, O-377 & O-378; On February 4, 2015 for Criminal Case No. O-476.
[4] Docket, pp. 698-714.

proposed that as regards Myrla Melad Bajar and/or Beneroso E. Bajar, they should be the sellers (and accused as buyer) which was agreed upon by the plaintiff.

Consequently, the testimonies of Daniel G. Encina, Dominiciana Atreto, Cesar Charlie C. Lim, Albert T. Quilala, Myrla Melad Bajar, Beneroso E. Bajar, Alejandro T. Polca, Atty. Manuel S. Padolina, and Atty. Rina S. Valdez-Cruz are dispensed with.

On June 13, 2017, the plaintiff filed a "Motion to Admit Attached Formal Offer of Evidence."

On July 6, 2017, accused filed an "Ad Cautelam Comments/Objections to Plaintiff's Formal Offer of Evidence."

On August 9, 2017, the Court issued a Resolution[5] granting the plaintiff's "Motion to Admit Attached Formal Offer of Evidence." In the said Resolution, the Court admitted the plaintiff's documentary evidence except Exhibits "P-4", "P-26", for failure of the plaintiff's witness to identify the same, and Exhibits "P-20", "P-21", "P-22", "P-25", and "P-32" for failure of the plaintiff to present their originals for comparison.

On August 14, 2017, accused filed the instant "Consolidated Demurrer to Evidence." The "Consolidated Demurrer to Evidence" was anchored on the grounds that: (1) absolutely no proof was proffered by the prosecution to show that the accused received taxable income for the year 2003 for which he should have paid income tax and filed a return for the same; (2) absolutely no proof was proffered by the prosecution to show that the income stated in accused's income tax returns for taxable years 2003 and 2009 is incorrect or inaccurate or that he had deficiency income taxes for 2003 and 2009; and (3) absolutely no proof was proffered by the prosecution to show that accused attempted to evade or defeat income taxes on his alleged income for the years 2003 and 2009.

<u>ALLEGATIONS OF THE ACCUSED</u>

As regards the first ground, accused avers that the Bureau of Internal Revenue (BIR) attempted to employ the expenditure method to prove the supposed liability of accused by presenting the following documentary pieces of evidence:

a. A copy of a purported Deed of Absolute Sale (DAS) dated December 15, 2003, supposedly entered into by the accused and one Daniel Encina (Exhibit "P-20");

[5] Docket, pp. 1283-1284.

b. A Certificate Authorizing Registration (CAR) supposedly issued in connection with the foregoing DAS (Exhibit "P-21"); and
c. A copy of Transfer Certificate of Title No. N-260027 in the name of accused, supposedly covering the real property of the DAS (Exhibit "P-22").

The said Exhibits "P-20", "P-21", and "P-22" were not admitted in evidence by the Court in the Resolution dated August 9, 2017 because the plaintiff failed to present the originals for comparison of the same; that the photocopies presented by the plaintiff constitute inadmissible hearsay evidence against the accused; that accused can never be held liable as there is no evidence at all to prove that he made expenses or purchases indicative of taxable income in 2003; that the plaintiff is given more than ample opportunity by the Court through several motions for re-settings to present witnesses from the BIR to prove or certify that accused was under a legal obligation to file an income tax return for taxable year 2003, however, no witness or document was presented by the plaintiff to prove the source of any undeclared income of accused in 2003 for which he was supposed to have paid income tax and filed a return in connection with the same.

As regards the second ground, accused argues that the plaintiff claims to have resorted to the expenditure method - a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures for the declared yearly income; that to prove its case, the plaintiff presented a supposed Computation of the Deficiency Taxes of the Accused for 2003 and 2009 (Exhibit "P-26"); that said exhibit was not admitted in evidence by the Court in its Resolution dated August 9, 2017 for failure of any witness to identify the same; that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments; that there is no evidence on record which supports the allegations in the Informations in CTA Case Nos. O-375, O-376 and O-378 as well as those made by plaintiff witnesses Regala and Duran to the effect that as against the accused there is a basic deficiency income tax of P4,871,359.94, more or less, for taxable year 2009 (exclusive of surcharge and interest) as well as basic deficiency income tax of P3,325,000.00, more or less, for taxable year 2003 (exclusive of surcharge and interest); that Exhibit "P-26" does not show the formula for the Expenditure Method of reconstructing a taxpayer's income was properly employed or if it was employed at all against accused; that in Exhibit "P-3" (Joint Reply Affidavit of Regala, Duran and Kahulugan), the plaintiff witnesses claimed that they also employed the Net Worth Method in arriving at the true and undeclared income of accused for the years 2003 and 2009; that no such witness of the plaintiff was presented to testify on the computation using the Net Worth Method; that the DAS (Exhibit "P-23") between Melad Bajar and Constantino T. Castillo III dated March 11, 2009, on its own and on its face, does not at all prove unexplained expenditure on the part of accused; and that the same DAS does not state the source of funds used to purchase the property.

As regards to the last ground, accused argues that there is no iota of evidence - much less one beyond reasonable doubt - on record to prove that the accused had taxable income in the years 2003 and 2009. The plaintiff failed to prove that the income that accused reported is inaccurate or incorrect; that the prosecution did not have duly admitted evidence of the computations employing the formula it claimed to have used to arrive at findings of income tax deficiencies for the accused for the years 2003 and 2009.

Accused further claims that while the plaintiff witnesses confirmed that the cases against him proceeded from a RATE investigation contemplated under BIR Revenue Memorandum Order No. 27-2010, no opportunity was given to the accused to present his side and to be heard before the BIR during the latter's own preliminary investigation as mandated in RMO No. 27-2010; that even the Letter of Authority (LOA) was served not upon the accused but upon another person not authorized by the accused; that the BIR took corrective steps to remedy the procedural faux by inviting the accused to a conference when the criminal complaint which gave rise to the instant cases had already been pending at the Department of Justice (DOJ); and that the BIR issued the Preliminary Assessment Notice (PAN), which was received by accused when the criminal cases against him are already pending before the DOJ.

ALLEGATIONS OF THE PLAINTIFF

In its Comment/Opposition (To Accused's Demurrer to Evidence), the plaintiff contends that the Expenditure Method clearly shows that accused had undeclared income; that accused was able to buy two expensive properties in Quezon City, a property in Project 3 for P10.5 Million in 2003 and another in Kalayaan Avenue for P15 Million in 2009; that as shown in the Complaint-Affidavit, in accused's lifetime, he had only filed ITRs with the BIR from 2005 to 2010, declaring a cumulative gross income for said years amounting to less than P2 Million; that despite income, accused was able to acquire properties more than twelve times the amount of his cumulative declared gross income; that where a taxpayer's expenses and purchases are grossly disproportionate to the income he declares in his tax returns, the most effective tools a tax authority has to arrive at the taxpayer's true and undeclared income is the Expenditure Method, hand-in-hand with the Net Worth Method; and that where a citizen betrays his duty to pay taxes and hides income earned through creative means from the State, the BIR can make use of different investigation methods, including the Net Worth Method and Expenditure Method to prove its case.

EVIDENCE PRESENTED BY THE PLAINTIFF

The evidence of the plaintiff is summarized as follows:

Accused Constantino T. Castillo III is a medical doctor by profession. He is a registered taxpayer of Revenue District No. 39, South Quezon City with Tax Identification Number (TIN) 200-921-030-000. His address is at No. 20 Kalayaan Avenue, Diliman, Quezon City.[6]

The first plaintiff's witness, Revenue Officer Josephine Duran testified that she was prompted to conduct an investigation on accused through a memorandum assignment[7] issued by Sixto C. Diy, Jr., Chief of National Investigation Division (NID). In connection with the investigation, a Letter of Authority[8] was issued to accused Castillo, authorizing Ms. Duran together with Cristina Kahulugan and Group Supervisor Socrates Regala to conduct an investigation for taxable years January 1, 1998 to December 31, 2010. The Letter of Authority was served by the group of Ms. Duran to Julieta T. Atacador on January 27, 2012.

On cross examination, Ms. Duran testified that the principal function of NID with respect to Run After Tax Evaders (RATE) cases is that they are the ones who develop cases and determine if there is a prima facie case. She is aware of Revenue Memorandum Order No. 24-2008, pertaining to the policies and procedures in the development and conduct of investigation in RATE cases. The information referred to in the memorandum of assignment refers to the information collated from the Corona's case. The information they gathered is from the conjugal property of the accused and his spouse Maria Carla Beatriz Corona. Ms. Duran cannot remember whether the information was gathered before issuance of the Memorandum of Assignment. She participated in the investigation by accessing information from the Land Registration Authority (LRA) and in serving the Letter of Authority. They served the Letter of Authority of Julieta T. Atacador, aunt of the accused. Ms. Duran identified the Joint Complaint Affidavit[9] she executed. She did not participate in computing the tax liability of accused. It was their Group Supervisor who did the computation using the expenditure method. The docket of the investigation conducted by Ms. Duran and her group has a docket number.

The second plaintiff's witness, Revenue Officer Clavelina S. Nacar testified that she received a communication from BIR National Office about the preliminary investigation against accused Castillo. In the said communication, she was requested to furnish a certification whether accused Castillo is a registered taxpayer in RDO No. 39 South Quezon City, and to issue certified true copies of the tax returns filed by accused Castillo for taxable years 2005 to 2010. In response, she executed a Certification[10] stating that accused is registered as a professional in the Revenue District Office No. 39,

[6] Exhibit "P-2", Joint Complaint Affidavit, page 2.
[7] Exhibit "P-27".
[8] Exhibit "P-28".
[9] Exhibit "P-2".
[10] Exhibit "P-5".

South Quezon City. She identified the certified true copies Income Tax Returns (ITR) filed by accused Castillo.[11]

On cross examination, she testified that she cannot recall the date when she was directed to issue a certification, but she can recall that the certification she issued was sometime in the year 2012. The documents that she certified are with Mr. Alex Perez, the Chief of the Document Processing Section.

The plaintiff's last witness, Revenue Officer Socrates O. Regala testified that as a group supervisor, his duty was to develop RATE case and other cases to be assigned. He and his group conducted an investigation on accused Castillo by virtue of a Memorandum of Assignment Order[12] dated December 19, 2011. They made a profile of the taxpayer by accessing the BIR Integrated Tax System (ITS) to determine the residence, the registered address, the registered district of the taxpayer and whether he is filed his ITR. After profiling, they asked certified copies of the various documents that accused filed in the district where he is a registered taxpayer. They also wrote the Land Transportation Office (LTO) and Register of Deeds regarding the property holdings and registered vehicles of accused. He sent a letter to Revenue District Officer Clavelina Nacar to issue a certification concerning accused Castillo. In response, Ms. Nacar issued Certified True Copies of the ITRs filed by accused for taxable years 2005, 2006, 2007, 2008, 2009 and 2010. Thereafter, they compared the deed of sale, deed of acquisition on various properties versus the indicated assets in the financial statements of the accused. The assets referred to are the property in Kalayaan Avenue with a building and the property in Project 3, Molave Street, Quezon City. Mr. Regala identified the Deed of Sale between Daniel Encina and accused Castillo marked as Exhibit "P-2," the Certificate Authorizing Registration marked as Exhibit "P-25," the Transfer Certificate of Title No. 260027 marked as Exhibit "P-22," the Deed of Sale marked as Exhibit "P-23", the Certificate of Authorizing Registration marked as Exhibit "P-24," and the Documentary Stamp Tax Declaration Return marked as Exhibit "P-25." After gathering information, they recommended the filing of RATE cases against accused Castillo. Thereafter, he executed a Joint Complaint Affidavit which was filed before the Department of Justice. After filing the case against accused with the Department of Justice, they sent various letters to accused Castillo to present his side on the civil aspect of the case. A Notice of Informal Conference[13] was issued to accused Castillo. In response, accused Castillo made a letter dated May 23, 2013.[14] The assessment or the notices sent to accused refer only to taxable years 2003 and 2009. Mr. Regala identified the PAN dated July 31, 2013 issued to accused, marked as Exhibit"P-31," and the Formal Letter of Demand (FLD) dated October 16, 2014, marked as Exhibit "P-32." The PAN and FLD refer to taxable years 2003 and 2009. According to Mr. Regala, it was only for the years 2003 and 2009 that they can prove that there is a discrepancy between the declared income and acquisition

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[11] Exhibits "P-16" to "P-19".
[12] Exhibit "P-27.".
[13] Exhibit "P-29."
[14] Exhibit "P-30."

because the Molave property was acquired in 2003 and the Kalayaan property was acquired in 2009.

On cross examination, Mr. Regala testified that he conducted a preliminary investigation in this case. In the letter from the Chief of NID, assigning him to conduct an investigation, it was not stated therein the reason why an investigation was being conducted on accused Castillo. After the investigation, Mr. Regala issued a Memorandum[15] dated January 24, 2012 addressed to Commissioner Henares, recommending that Letters of Authority covering taxable years 1998 to 2010 be issued against spouses Constantino Castillo III and Maria Carla Beatriz Corona. He does not know the reason why he was asked to investigate the accused. As regards the Letter of Authority, he testified that the same was served by Josephine Duran and Cristina Kahulugan. He was with Josephine Duran and Cristina Kahulugan when the Letter of Authority was served but he was in the car when the same was delivered.

According to Mr. Regala, he used the expenditure method in the computation of accused's tax liability. The formula for the expenditure method is expenditure (money spent or applied) less non-taxable sources of funds = corrected adjusted gross income less itemized/standard deduction personal exemption = corrected taxable income less reported taxable income = additional taxable income (unreported income). As stated by Mr. Regala, considering that the sources of funds to acquire the subject properties are unexplained, such funds represent unrecorded income. He also testified that he is not the custodian of the certificates of registration, deed of absolute sale, and income tax returns, the same documents from which he based his investigation.

The documentary evidence admitted pursuant to the Court's Resolution dated August 9, 2017 are the following:

EXHIBIT	DESCRIPTION
"P-1"	Referral Letter of Commissioner Kim Jacinto-Henares dated August 29, 2012 to the Department of Justice
"P-2"	Joint Complaint-Affidavit of Socrates O. Regala, Josephine D. Duran and Cristina A. Kahulugan dated August 30, 2012
"P-3"	Joint Reply-Affidavit of Socrates O. Regala, Josephine D. Duran and Cristina A. Kahulugan dated October 25, 2012
"P-5"	Certification dated January 17, 2012 issued by Revenue District Office (RDO) No. 39 through Clavelina Nacar
"P-6" to P-6-c"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2005 consisting of four (4) pages
"P-7" to "P-7-b"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2006 consisting of three (3)

[15] Exhibit "P-33" was not formally offered by the plaintiff.

	pages
"P-8" to "P-8-b"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2007 consisting of three (3) pages
"P-9" to "P-9-b"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2008 consisting of three (3) pages
"P-10"	Balance Sheet of Constantino T. Castillo III ending December 31, 2008 as part of his ITR for 2008
"P-11"	Income Statement of Constantino T. Castillo III ending December 31, 2008 as part of his ITR for 2008
"P-12" to "P-12-b"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2009 consisting of three (3) pages
"P-13"	Income Statement of Constantino T. Castillo III ending December 31, 2009 as part of his ITR for 2009
"P-14"	Schedule of Taxes and Licenses of Constantino T. Castillo III ending December 31, 2009 as part of his ITR for 2009
"P-15"	Balance Sheet of Constantino T. Castillo III ending December 31, 2009 as part of his ITR for 2009
"P-16" to "P-16-b"	Annual Income Tax Return (BIR Form 1701) of Constantino T. Castillo III for taxable year 2010 consisting of three (3) pages
"P-17"	Balance Sheet of Constantino T. Castillo III ending December 31, 2010 as part of his ITR for 2010
"P-18"	Income Statement of Constantino T. Castillo III ending December 31, 2010 as part of his ITR for 2010
"P-19"	Schedule of Taxes and Licenses of Constantino T. Castillo III ending December 31, 2010 as part of his ITR for 2010
"P-23"	Deed of Absolute Sale between Myrla Melad Bajar and Constantino T. Castillo III dated March 11, 2009
"P-24"	Certificate Authorizing Registration (CAR 2008 00128634)
"P-27"	NID Memo Assignment No. KJH/SCD 2015-12-19-1226 dated December 19, 2011
"P-28"	Letter of Authority (LOA-211-2012-00000007) dated January 25, 2012
"P-29" to "P-29-a"	Notice of an Informal Conference addressed to Constantino T. Castillo III dated May 14, 2013
"P-30"	Letter dated May 23, 2013 of Constantino T. Castillo III addressed to the BIR
"P-31"	Preliminary Assessment Notice (PAN) dated July 31, 2013 addressed to Constantino T. Castillo III with total amount of Php21,626,632.43, consisting of two (2) pages

The following pieces of documentary evidence were denied admission by the Court for failure of the plaintiffs to identify the exhibits:

EXHIBIT	DESCRIPTION
"P-4"	Memorandum of the Bureau of Internal Revenue dated December 21, 2012
"P-26"	Computation of Deficiency Taxes of Constantino T. Castillo III

The following pieces of documentary evidence were denied admission by the Court for failure of the plaintiff to present their originals for comparison:

EXHIBIT	DESCRIPTION
"P-20"	Deed of Absolute Sale between Daniel G. Encina and Constantino T. Castillo III dated December 15, 2003
"P-21"	Certificate Authorizing Registration (CAR 2003 00133460)
"P-22"	Transfer Certificate of Title No. N-260027 in the name of Constantino T. Castillo III, consisting of four (4) pages
"P-25"	Documentary Stamp Tax Return filed by Constantino T. Castillo III
"P-32"	Formal Letter of Demand dated October 16, 2014 addressed to Constantino T. Castillo III with total amount of Php23,661,013.26, consisting of three (3) pages with Registry Return Receipt dated December 23, 2014

<u>RULING OF THE COURT</u>

Rule 33 of the Rules of Court provides:

> "**Section 1. *Demurrer to evidence.*** – After the plaintiff has completed the presentation of his evidence, the defendant may move for the dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

A demurrer to 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. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.[16]

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[16] Soriquez vs. Sandiganbayan, G.R. No. 153526, October 25, 2005, citing Gutib vs. Court of Appeals, G.R. No. 131209, August 13, 1999.

Accused was charged of violation of Section 254 of the NIRC of 1997, as amended, in Criminal Case Nos. O-375 and O-376, which states:

> "**Sec. 254.** ***Attempt to Evade of Defeat Tax.*** – Any person who wilfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000.00) but not more than One hundred thousand pesos (P100,000.00) 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."

There is violation of Section 254 of the NIRC when the following are present:

1. The end to be achieved, i.e. the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;
2. An accompanying state of mind which is described as being "evil," "in bad faith," "willfull"' or deliberate and not accidental";
3. A course of action or failure of action which is unlawful.[17]

On the other hand, accused was charged of violation of Section 255 of the NIRC of 1997 as amended, in Criminal Case Nos. O-377 and O-378, which states:

> "**Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by laws 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

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[17] *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, September 14, 2004, citing De Leon, Fundamentals of Taxation 53 (1988 ed.), citing Batter, Fraud under Federal Tax Law 15 (1953 ed.).

(P10,000.00) 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 failed a return or statement, 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 an 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 (P10,000.00) but not more than Twenty thousand pesos (P20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

The following are the elements of the crime of violation of Section 255 that must be proven by the plaintiff:

1. The accused is the person required under the tax code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;
2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and
3. Such failure was willful.

Based on the allegations in the Informations, in order to hold accused Castillo liable of the crimes charged, the prosecution must first prove that there were unreported income for which he is liable for the unpaid income taxes.

The prosecution claims that accused Castillo violated Sections 254 and 255 of the NIRC and consequently had unreported income because he was able to acquire properties in Quezon City during the subject taxable years. Hence, based on the expenditure method which the plaintiff used in determining accused's liability, plaintiff presumed that accused Castillo had unreported income.

In its attempt to prove that there was unreported income for taxable year 2003, plaintiff presented the Deed of Absolute Sale covering the Molave property,[18] the Certificate Authorizing Registration supposedly issued in connection with the Deed of Sale[19] and the Transfer Certificate of Title No. N-260027 in the name of accused supposedly covering the real property in the Deed of Absolute Sale.[20] These documents were denied admission because the plaintiff failed to present their originals for comparison during trial of these

[18] Exhibit "P-20."
[19] Exhibit "P-21."
[20] Exhibit "P-22."

cases. Section 3, Rule 130 of the Rules of Court[21] provides that the original document must be produced whenever its contents are the subject of the inquiry.

On the other hand, The Deed of Absolute Sale covering the Kalayaan property,[22] the Certificate Authorizing Registration supposedly issued in connection with the Deed of Absolute Sale,[23] the ITRs covering taxable years 2005 to 2010,[24] the Balance Sheet and Income Statement of accused Castillo covering the said taxable years[25] are the basis of the examiner's claim that accused did not declare his true income for taxable year 2009. After examination, the Court finds unacceptable the Exhibits "P-23" and "P-24" as basis of accused's liability for taxable year 2009 because although the said exhibits are certified true copies, the same however do not reflect the complete contents thereof because this Court observed that the said documents were improperly photocopied.

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of accused must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[26]

The burden of proof lies with the plaintiff to prove that there was indeed "unreported income during the subject taxable years for which accused Castillo should be held accountable for." The plaintiff wants this Court to believe that by mere declaring that based on the computation using expenditure method, there appears unaccounted source of cash, thus, accused was already guilty of the crimes charged.

The requirement to prove the likely source of income to justify the use of expenditure method was discussed in the case of *Bureau of Internal Revenue, as*

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[21] Section 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases;

(a) When the original has been lost or destroyed or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the later fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot ne examined in court, without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[22] Exhibit "P-23."

[23] Exhibit "P-24."

[24] Exhibits "P-6 to P-6-c", "P7 to P-7-b", "P-8 to P-8-b", "P-9 to P-9-b", "P-12 to P-12-b", "P-16 to P-16-b."

[25] Exhibits "P-10", "P-11", "P-13", "P-14", "P-15", "P-17", "P-18", "P-19."

[26] People of the Philippines vs. Nenita B. Hu, G.R. No. 182232, October 6, 2008 citing People vs. Corpuz, 459 Phil 100.

represented by the Commissioner of Internal Revenue vs. Court of Appeals, Spouses Antonio Manly, and Ruby Ong Manly:[27]

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

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

[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.[79] The computation, as wellas 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 under declaration of rental income.

Apparently, the revenue officers considered respondent Antonio's rental business to be the likely source of their unreported or undeclared income due to his unjustified refusal to allow the revenue officers to inspect the building."

Expenditure method 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 exceed his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditure represent unreported or undeclared income.[28]

The computation representing the income tax deficiency of accused Castillo, marked as Exhibit "P-26" which the plaintiff offered in evidence was

[28] *Bureau of Internal Revenue, as represented by the Commissioner of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014.

denied admission by this Court pursuant to Section 20, Rule 132 of the Rules of Court.[29] Hence, said computation has no evidentiary value.

Furthermore, to attribute to accused Castillo "willful failure to file income tax return, and to pay the corresponding tax" and "willful failure to supply correct accurate information in the annual income tax return and to pay the corresponding tax" it must be shown that such failure or omission by accused Castillo was done knowingly, intentionally and with the specific intent not file the ITR and pay the tax and that he wilfully supplied inaccurate information in his ITR. In other words, "it must be shown that accused was aware" of his obligation to file the ITR, to supply correct and accurate information in the ITR, pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to do the same.

A scrutiny of the pieces of evidence before this Court clearly shows that there is not enough competent evidence to support the verdict of guilt. Plaintiff failed to prove the elements of the crimes charged against accused Castillo. The pieces of evidence presented before this Court are not conclusive basis that accused Castillo had unreported income for taxable years 2003 and 2009. The alleged purchase by accused Castillo of the Molave property in 2003 and Kalayaan property in 2009 could not be presumed as arising from his alleged unreported income in 2003 and 2009, since the consideration in purchasing the said properties may likewise be presumed to have been obtained from donations or other income subjected to final tax.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[30]

WHEREFORE, premises considered, the "Consolidated Demurrer to Evidence" is **GRANTED**. Accordingly, CTA Criminal Case Nos. O-375, O-376, O-377 and O-378 are **DISMISSED** for insufficiency of evidence.

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[29] Section 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

[30] *Darwin vs. Court of Appeals, et al.,* G.R. No. 125044, July 13, 1998.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice