REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FELONILA Z. CALUAG,
Accused.

CTA CRIM. CASE NO. O-330

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

Promulgated:

SEP 06 2017 1:55 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

Accused Felonila Z. Caluag (Caluag) was charged of Violation of Section 255, paragraph 1, of the 1997 National Internal Revenue Code (NIRC), as amended, allegedly committed as follows:

> "That on various dates in 2005 in Sta. Maria, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 10,032.456 troy ounces valued at Two Hundred Forty-Three Million Four Hundred Thirty-One Thousand Five Hundred Seventy Pesos and Eighteen Centavos (Php243,431,570.18),

2000

excluding refining charges, and despite receipt of payment amounting to Two Hundred Forty-Three Million Eighty-Seven Thousand One Hundred Thirty Pesos and Seventy Centavos (243,087,130.70), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2005 on or before April 15, 2006, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in accused's failure to pay the correct income tax to the damage and prejudice of the Government."

CONTRARY TO LAW.

On April 15, 2013, this Court issued a Resolution[1] ordering the issuance of a warrant of arrest for accused Caluag.

On May 2, 2013, the Court issued the Warrant of Arrest[2] for the accused.

On May 10, 2013, accused Caluag voluntarily appeared before the Court and submitted herself to the jurisdiction of the Court by posting a cash bail bond in the amount of P20,000.000 for her provisional liberty.

On May 29, 2013, accused, through her counsel, filed a "Motion to Quash,"[3] stating that for failure to clearly allege the amount of tax due in the Information, the Court did not acquire jurisdiction over the case. Hence, accused prayed that the Information be quashed.

On May 31, 2013, the plaintiff filed a "Motion to Admit Attached Amended Information." The Amended Information reads as follows:

"That on various dates in 2005 in Sta. Maria, Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 10,032.456 troy ounces valued at Two Hundred Forty-Three Million Four Hundred Thirty-One Thousand Five Hundred Seventy Pesos and Eighteen Centavos (Php243,431,570.18), excluding refining charges, and despite receipt of payment amounting to Two Hundred Forty-Three Million Eighty-Seven Thousand One Hundred Thirty Pesos and Seventy Centavos (Php243,087,130.70), said accused, although required by law and

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[1] Docket, CTA Case No. 0-330, pp. 648-649.
[2] Docket, p. 650.
[3] Docket, pp. 659-663.

the rules and regulations to file her annual income tax return for taxable year 2005 on or before April 15, 2006, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in said accused's failure to pay the income tax due thereon amounting to Seventy-Seven Million Seven Hundred Forty-Six Thousand Four Hundred Eighty-One Pesos and Eighty-Two Centavos (Php77,746,481.82), excluding the interest and the surcharges, to the damage and prejudice of the Government."

CONTRARY TO LAW.

During the arraignment on June 5, 2013, the Court granted the plaintiff's "Motion to Admit Attached Amended Information." Accordingly, the accused's "Motion to Quash" was denied. The Court also ordered for the arraignment of accused to proceed.

Accused Caluag, with the assistance of her counsel de parte, Atty. Gabriel A. Silvera, pleaded "Not Guilty" to the crime charged.[4]

The Pre-Trial Conference[5] was terminated on July 3, 2013. On July 17, 2013, the Court issued a Pre-Trial Order.[6]

Trial thereafter ensued. The plaintiff presented four (4) witnesses, namely, Ms. Ma. Racel B. Wacan, Mr. Teogenes T. Abrigo, Jr., Ms. Erlinda R. Derramas and Ms. Yolanda J. Benjamin.

Plaintiff's first witness, ***Ma. Racel B. Wacan***,[7] a Revenue Officer assigned at the National Investigation Division (NID), testified that she has been employed by the BIR (Bureau of Internal Revenue) for almost twelve years. Among her duties and functions are to conduct examination of taxpayers which include the examination and auditing of their books of accounts and other accounting records. The examination includes the verification from third party sources and information of the correctness of the returns filed by the taxpayer in order to determine the correct tax liabilities of a particular taxpayer; to submit reports about the status of preliminary investigation and final reports of investigation on the cases they investigate; to make a proper assessment of the correct taxes that should have been paid by the taxpayer; and to inform the BIR of any tax irregularities or fraud that they encounter during the audit. The members of her group are Ms. Amelita M. Tagude, Mr. Jose Amor B. Dayoan, and their supervisor is Mr. Arnel B. Magbag.

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[4] Resolution dated June 20, 2013, Docket, pp. 718-719.
[5] Docket, pp. 737-738.
[6] Docket, pp. 740-755.
[7] Testified on July 31, 2013.

On January 24, 2011, a Memorandum[8] was issued to their group to investigate the accused. Their office was given confidential information that accused was involved in hundreds of gold sales transactions with the Bangko Sentral ng Pilipinas (BSP). Their group commenced their initial investigation by checking their office computer database to get the profile of the accused. They found out that accused was registered with the BIR as a One-Time Transaction Taxpayer only. Accused's registered address is at 438 Saluysoy, Meycauayan City, Bulacan. They requested the BSP for information regarding accused's annual gold sales. The BSP supplied them the requested documents, the Letter of Delivery and Sale[9] and Letter of Authorization,[10] signed by accused, covering sale transactions from 2005 to 2009; The BSP issued a Certification dated April 1, 2011 signed by Deputy Director Simeona G. Llanes summarizing accused's annual gold sales amounting to P243 Million in 2005 and a total of over Php1.2 Billion in gold sales from 2005 to 2009,[11] all of which she identified in open court. She requested a certification from the BIR Revenue District Office detailing the tax payments of accused for taxable years 2005 to 2009. Revenue District Officer Teogenes T. Abrigo, Jr. issued a Certification[12] dated April 14, 2011. Her team requested a Letter of Authority to examine the accused's books of accounts and other accounting records. The Letter of Authority[13] was issued on April 15, 2011. After confirming that accused did not file tax returns, she and her team proceeded to collate their evidence against accused and computed accused's tax liabilities. Based on their computation,[14] accused earned income of Php243,087,130.70 in gold sales for taxable year 2005 and is liable for basic income taxes in the amount of Php77,621,481.82. She and her team recommended the filing of criminal charges against the accused. She and her team executed a Complaint-Affidavit.[15] The Commissioner of Internal Revenue (CIR) approved their recommendation and issued a Referral Letter[16] to the Department of Justice (DOJ) authorizing their group to file a criminal case against accused. They filed the Complaint-Affidavit before the DOJ on April 28, 2011. A preliminary investigation was conducted before Prosecutor Crisaldo R. Rioflorido and Prosecutor Benjamin R. Samson, wherein accused filed her Counter-Affidavit and Rejoinder-Affidavit. In the affidavits, accused raised various defenses but she nonetheless admitted that she did not file her Annual Income Tax Returns (ITRs). She was present in the hearing before Prosecutor Benjamin Samson when accused admitted that she failed to file her ITRs. Despite service of Letter of Authority to accused, accused failed to comply with the request to produce accounting records and books of accounts. Thereafter, a Preliminary Assessment Notice (PAN) was issued to accused. She executed a Judicial Affidavit for this case.[17]

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[8] Exhibit "O5-1".
[9] Exhibit ""C" to "B5".
[10] Exhibit "C5".
[11] Exhibit "N5".
[12] Exhibit "D5".
[13] Exhibit "O5".
[14] Exhibit "E5".
[15] Exhibit "F5".
[16] Exhibit "H5".
[17] Exhibit "P5".

On cross examination, Ms. Wacan testified that she and her team conducted investigation pursuant to the NID Memorandum of Assignment. A Preliminary Assessment Notice was issued and received by the accused but they have not yet issued a Final Assessment Notice. Accused submitted a letter requesting for a compromise agreement which was denied. The request letter was written in Tagalog, and it was stated there that she be allowed to pay the amount that she can afford. Accused's letter request was submitted after she received the preliminary assessment notice. She cannot declare the origin of the confidential information which was relayed to their office in writing. She has no personal knowledge of what happened between accused and the BSP during the year 2005. She has no participation in the preparation of the Certification and Letters of Delivery and Sale.

On re-direct examination, Ms. Wacan testified that the letters of delivery and sale were provided by the BSP when their office sent a letter of access to the BSP's records. An examination of the Letters of Delivery and Sale shows that in the portion name of seller, accused herself signed the same over her printed name. They conducted an examination pursuant to the NID Memorandum of Assignment but with no direct contact with the taxpayer. The examination was conducted by accessing the BIR Integrated Tax System (ITS) database and information from third party sources. The accused's principal place of business is in Saluysoy, Meycauayan, Bulacan. Based on the documents they gathered, it is not necessary to audit the books of the accused because accused is a non-filer and their evidence is already complete for filing of the case.

On re-cross examination, Ms. Wacan reiterated that she has no personal knowledge of the actual transactions between the BSP and accused.

Plaintiff's second witness, ***Mr. Teogenes T. Abrigo, Jr.,***[18] Chief Revenue Officer IV of the BIR, presently assigned as Revenue District Officer of Revenue District Office No. 25B, Sta. Maria, Bulacan, testified that he has been connected with the BIR for almost thirty-five (35) years. He was assigned as Revenue District Officer of Revenue District Office No, 25B, Sta. Maria, Bulacan in January 2011. The Revenue District Office No. 25B, covers the municipalities of Angat, Dona Remedios Trinidad, Marilao, Meycauayan, Norzagaray, Obando, Santa Maria, San Ildefonso, San Miguel, San Rafael and San Jose del Monte City. Among his duties in RDO 25B were to oversee or supervise the functions of the revenue district office, which include the assessment of internal revenue taxes, monitoring of taxpayer compliance with regard to their tax payments, and ensuring that the operations of the office are properly performed. He issued a Certification concerning accused upon the instruction of BIR Deputy Commissioner Estela V. Sales,[19] directing him to provide information regarding the tax registration of accused. He was instructed to produce the tax returns filed by accused for taxable years 2005 to

[18] Testified on September 25, 2013.
[19] Certification, marked as Exhibit "R5".

2004

2009, or in the alternative, to issue a certification in the event accused did not file tax returns for the said years. In compliance with the instruction, he utilized the BIR ITS, a program utilized by the BIR wherein all tax returns received nationwide are encoded into a computerized database system and stored, in getting accused's tax information. Upon verification, he discovered that accused is only registered with the BIR for a One-Time Transaction. Accused did not register nor declare any business activities with the BIR. He also found out that accused did not file ITRs for taxable years 2005 to 2009. Consequently, he issued a Certification[20] stating his findings and also executed a Judicial Affidavit for this case.[21]

On cross examination, he testified that his certification consists of two parts- the registration part and the non-filing part. In the "one time transaction" the BIR tracks taxpayers for doing transactions only once like sale of real properties. The said transactions had nothing to do with the registration of business. The second part of his certification refers to whether the business taxpayer has complied with the requirement of filing the required or necessary returns. He does not personally know accused and he does not know whether accused was engaged in business or not.

Plaintiff's third witness, ***Ms. Erlinda R. Derramas***,[22] acting Deputy Director for Laboratory and Control Group of the BSP Mint and Refinery Operations Department (MROD), testified that she was employed in the BSP since October 1977 and she previously held the positions of Bank Officer II and III, Accountant IV, Financial Control Supervisor, and Manager of the Administrative Division. She served as Manager of the Administrative Division from June 2006 to October 2011. The functions of the MROD are (a) to purchase gold from small-scale miners in accordance with Section 17 of republic Act No 7076 of the People's Small Scale Mining Act of 1991", as well as from other sellers; (b) to produce circulation coins and special coinage and medals; and (c) to refine the gold purchased to forms acceptable in the international market. As a Manager, she supervised, planned, organized, and coordinated the activities and functions of the Administrative Division with respect to records management as well as property and supply management; that she also oversee the personnel administration of the Division as well as the implementation of internal rules and regulations.

Continuing her testimony, Ms. Derramas clarified that a Letter of Delivery and Sale is a document accomplished by a vendor when he sells and delivers gold to the BSP. It contains the weight, number of gold pieces, and the bar/lot number of the gold being sold. The gold being sold, together with two copies of the Letter of Delivery and Sale, are delivered to the officers of the BSP Refinery Materials Control (RMC). The RMC preserves the Letters of Delivery and Sale for 1 to 2 years and thereafter, transfers the same to the

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[20] Exhibit "D5".
[21] Exhibit "Q5".
[22] Testified on October 23, 2013.

2005

Administrative Division of the MROD for safekeeping. She identified the Letters of Delivery and Sale[23] executed and signed by accused and admitted that she was the one who certified as xerox copies of the Letters of Delivery and Sale. She identified the photocopy of Letter of Authorization[24] prepared by accused authorizing Messrs. Roselier Cruz, Melissa Cruz and Teodorico Zamora for the panned gold-buying program of the BSP. She executed a Judicial Affidavit for this case.[25]

On cross-examination, Ms. Derramas testified that the subject Letters of Delivery and Sale were submitted in the Administrative Division of the MROD. She did not see who actually signed the Letters of Delivery and Sale. The duplicate copies of the Letters of Delivery and Sale are kept in their office, Administrative Division of the MROD. The transactions covered by the Letters of Delivery and Sale are in the year 2005. She held the position of Bank Officer III during the subject sales transaction. The certified xerox copies of the Letters of Delivery and Sale were reproduction of the original duplicate copies in their files.

Plaintiff's fourth witness, ***Ms. Yolanda J. Benjamin***,[26] presently the Manager of Budget Administration and Disbursement Division (BADD), Security Plant Complex, Bangko Sentral ng Pilipinas, testified that she has been employed with the BSP since April 18, 1977. The BADD is in charge of budget monitoring, reports, payment of goods or services and gold purchases made by the BSP. As the manager of BADD, her duties are to check and verify the accuracy and completeness of documents forwarded to the office by the MROD for payment. Her testimony will refer to the Certification[27] issued by her former immediate superior, Simeona G. Llanes which was issued upon the request of the BIR Enforcement Service. She identified the signature of Simeona G. Llanes as the signature of the latter since is familiar with the signature. The "TR.OZ" appearing in the Certification refers to troy ounce, which is a unit of measure used to measure the weight of gold. The measurement of gold sold by accused was based on the computation sheet prepared by the Accounting Division, Financial Division and Data Management Group. The term "Value" appearing in the Certification refers to the total value in pesos of the gold sold by accused for the entire year. The amount of Php243,431,570.18 appearing in the Certification was computed by multiplying the weight of gold sold by the price of gold in dollars, multiplied by the exchange rate at the date of sale; that the term "Refining Charges" appearing in the Certification refers to the fees shouldered by the gold seller to cover the cost incurred by the BSP in refining the raw gold sold to it so that it is converted into gold bars acceptable for sale in the market. The refining charges in the amount of Ph344,439.48 appearing in the Certification was based on the computation sheet. The "Net Payment" appearing in the Certification

[23] Exhibit "C-B5".
[24] Exhibit "C5".
[25] Exhibit "S5".
[26] Testified on November 20, 2013.
[27] Exhibit "N5".

2006

refers to the amount paid to accused by the BSP for the value of the gold that she sold, less refining charges. The net payment received by accused in the amount of Php243,087,130.70 was derived by deducting the refining charges from the value of the gold sold (Php243,431,570 – Php344,439.48 = Php243,087,130.70). She executed a Judicial Affidavit for this case.[28]

On cross examination, she testified that her immediate superior, Simeona G. Llanes retired in March 2013. She participated in the computation of the payments made by accused. The computation was done by her group under her supervision. The Certification was signed by Simeona G. Llanes. She is very familiar with the signature of Simeona G. Llanes because the latter has been her boss for a long time.

On January 3, 2014, plaintiff filed its "Formal Offer of Evidence.[29] On February 5, 2014, accused through her counsel, filed "Comment on Formal Offer."[30]

In the Resolutions dated February 18, 2014[31] and April 16, 2014[32], the Court admitted all the plaintiff's Exhibits.

On February 28, 2014, accused through her counsel filed a "Motion for Leave of Court to File Demurrer to Evidence."[33] On March 21, 2014, the plaintiff filed its "Comment (To Motion for Leave to File Demurrer to Evidence." In the Resolution dated April 16, 2014, the Court granted accused's "Motion for Leave of Court to File Demurrer to Evidence."

On May 5, 2014, accused, through her counsel, filed the Demurrer to Evidence.[34] On May 15, 2014, the plaintiff filed a "Comment [To Demurrer to Evidence]." On May 27, 2014, the Court issued a Resolution denying the Demurrer to Evidence of the accused.[35] On June 18, 2014, accused filed a "Motion for Reconsideration."[36] On July 2, 2014, the plaintiff filed a "Comment [To Accused's "Motion for Reconsideration]."[37] On July 14, 2014, accused filed a "Reply To Comment."[38] On July 24, 2014, the Court issued a Resolution[39] denying for lack of merit the "Motion for Reconsideration."

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[28] Exhibit "U[5]".
[29] Docket, pp. 1126-1137.
[30] Docket, pp. 149-1433.
[31] Docket, pp. 1435-1436.
[32] Docket, pp. 1461-1463.
[33] Docket, pp.1442-1445.
[34] Docket, pp. 1464-1477.
[35] Docket, pp. 1495-1501.
[36] Docket, pp. 1508-1517.
[37] Docket, pp. 1521-1524.
[38] Docket, pp. 1526-1530.
[39] Docket, pp. 1532-1533.

On the other hand, to prove her defense, accused presented herself, Mr. Jose Filomar R. Bas, Mr. Roselier C. Cruz, Ms. Marinela C. Labudlay, Ms. Maritess F. Encina and Mr. Arnel B. Magbag.

Accused's first witness, ***Jose Filomar R. Bas***,[40] Certified Public Accountant and Vice-President of ETM Tax Agent Office (ETM-TAO), testified that he knew the accused in this case. He was hired by accused as a tax consultant to assist her in the case filed against her. There is a written contract for his services. His participation is to help accused to have a peace of mind. Accused explained before the DOJ that she did not earn any profits because of high processing costs and other factors. Despite the said explanation, the DOJ still proceeded to file the case before the Court of Tax Appeals. Accused is married and her date of marriage is October 25, 1972. The revenue officers erroneously computed the supposed tax liability as undeclared sales (sales to BSP), less personal exemption equals taxable income per audit. In the Letter of Authority issued by the CIR, the revenue officers who were assigned to audit accused did not have the rank of Division Chief or higher because what was stated as their positions are revenue officers only. The accused's supposed tax liability was erroneous because the amount assessed did not consider the costs of processing of gold and the married status of accused. It is only the income that may be subjected to tax. Accused attended meetings with the gold traders and officials of BSP, wherein it was discussed that not all people selling gold are miners, hence, they should not be held liable for excise taxes, and as regards income tax, the BIR was not aware that they are charging the tax for the total amount of gold that the sellers delivered and not just for the amount they earned. Accused, together with the gold traders, were made to believe that they were doing a great service to the country by selling gold directly to the BSP. Accused and other gold traders were made to understand that the BSP would take care of any and all tax consequences of their transactions. He executed his Judicial Affidavit[41] in this case.

On cross examination, Mr. Bas testified he has personal knowledge of the meetings held in the BSP but he was not present during the meetings. He secured a copy of the minutes of the meeting at the BSP.

The second witness, ***Roselier R. Cruz***,[42] married and a resident of Saluysoy, Meycauayan, Buacan, testified that he will discuss his participation in the sale of gold with the BSP, that is, the procedure in the sale of gold. He started in the sale of gold in year 2004. He studied how to sell gold and how to negotiate in the sale of gold. He knew accused because accused is one of the buyers of gold in Saluysoy. The pricing of gold varies every day. The price of gold for the day may be inquired through telephone before the BSP before a gold trader sells gold. It is important to know the price of gold in the BSP to determine the prevailing price per gram of gold on that particular day. The gold

[40] Testified on September 24, 2014.
[41] Exhibit "38".
[42] Testified on November 12, 2014.

2002

traders buy gold at a lower price than the buying rate of BSP because there are costs on processing or handling fees when selling gold to the BSP, expenses on the employees and agents, transportation, and security in delivering the gold to the BSP. He knew accused because he assisted her in selling gold to the BSP. Accused approached him and asked him to assist her in selling gold to the BSP because she is not comfortable in dealing with the employees of BSP. When he inquired with the BSP on how to sell gold, he discovered that it is easy to sell gold. The BSP only requires the cedula of the seller. They are happy because the transaction is easy and through the sale of gold, they can help the government's economy. The gold traders do not want to sell gold if they are still the ones who will shoulder the taxes because they will lose more money. The gold for sale with the BSP will be weighed and assessed according to their procedure, and if the gold is rated 99.5% onwards, it will be sold higher and based on the prevailing price on the day of transaction, otherwise, the gold will be sold at a lower price. As regards the payment, the BSP will give the 90% of the payment the day after the sale transaction and the remaining 10% of the payment will be given to the seller after 90 days. The usual practice in buying gold in Saluysoy is lower than the Php2.00 rate from the BSP. The profit in selling gold to the BSP depends on the lower cost of gold acquired in Saluysoy. He knew the sale transactions of accused before the BSP because he is her principal agent. He knew that accused does not have any profit in the sale of gold because he was the one who brought the gold to the BSP and he was the one who computed the payment; that the BIR is asking accused to pay the taxes in the belief that accused had a big profit in selling gold with the BSP. Accused did not have a big profit in the sale of gold because there are a lot of expenses incurred in the sale. Only a few amount of profit was left or sometimes she does not incur any profit at all. It is wrong to base the tax on the gross sales, the tax should be based only on the profit. The BIR is doing this scheme because it is easier to file a case on the taxpayer; that the BIR was not aware whether accused really had profits in the sale of gold because there are a lot of things to consider like the expenses in the sale of gold. He executed a Judicial Affidavit[43] in this case.

On cross examination, he testified that he is an expert in buying and selling gold. He does not have a license or accreditation in selling gold. He and accused helped each other in selling gold to the BSP; that they started selling gold to the BSP in 2004. He assisted accused because the latter is not comfortable in dealing with people in the government; that he is the accused's principal agent in dealing with the BSP. Accused is only a small time gold trader. He computes the payments to be made to accused; He is not aware that the payments made to accused amounted to billion pesos in a year.

On redirect examination, he testified that the BSP only asked the traders to provide a cedula and a picture. The price of gold depends on the quality of gold sold to BSP. Aside from the quality of the gold, the other factor that affects the profit of the seller is the processing fee to be paid to the BSP, in the

[43] Exhibit "39".

2009

amount of P1,600.00 per transaction. No withholding tax and value-added tax were collected. They will have to come back on the following day to get the check payment covering the 90% of the total price and the remaining 10% will be paid after 90 days. They incur transportation expenses.

The third witness, accused herself, testified that she is married and a resident of Saluysoy, Meycauayan, Bulacan. She studied up to High School and she cannot understand the English Language. She started in the business of buying and selling gold in the year 1960 because there are a lot of gold miners, gold traders, jewelers, and gold refiners in Meycauayan. This is also the business of her parents, relatives, and friends. Since then, she studied how to operate this kind of business, how to negotiate in the selling of gold, and the actual pricing in the sale of gold. The gold traders come to Saluysoy or even in other parts of Meycauayan to sell their gold for higher prices. The prices of gold are based on the prevailing selling price at the BSP; that the gold traders buy gold at a lower price of Php2.00 from the buying rate of BSP to cover the expenses of sale, processing, handling fee of Php1,600.00 per transaction, expenses for the employees and agents, expenses for transportation, and security in transporting the gold to the BSP. She started this business with only a small amount of capital. In the year 2004, she learned from other gold traders that gold can be sold to BSP that is why she tried selling the same. She talked to Roselier, a former gold trader, to accompany her to sell gold to BSP. She learned from Roselier that it was easy to sell gold to BSP and asked him to accompany her. She was happy because the transactions before the BSP were fast and easy and the BSP also needed gold reserve. The BSP required her to bring her cedula and ID picture in order to transact. Gold traders can help the country's economy by selling gold to BSP. She started selling gold to BSP in 2004. The gold being sold to BSP will be assessed. The gold should be 99.5 % to pass the test. The buying rate will be applied if the gold is 99.5 % but if the rate is lesser than 99.5 %, the selling price will be decreased. She is also paying interest for her debts. Her debts are not in writing. Despite the expenses incurred in the sale of gold to BSP, she still earned profits good enough to sustain their living. The BSP confirmed that gold traders are not required to pay taxes in their sale transactions because the BSP is the one in charge of taxes. The gold traders will lose a lot of money if they will still pay taxes for the sale of gold to BSP. The gold traders will be paid the 90% amount of the gold sold a day after the sale transaction and the remaining 10% of the payment will be released after 90 days. The profit of gold traders depends on the kind of gold sold and depending on the prevailing rate of gold. She executed a Judicial Affidavit[44] for this case.

On cross examination, accused testified that as far as she knows, she will not be swindled in her sale of gold to BSP. She does not know that there is a BIR office in Bulacan. She has an ITR and paid taxes but she did not bring with her the ITR.

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[44] Exhibit "40".

2016

The fourth witness, ***Marinela C. Labudlay,***[45] a resident of Saluysoy, Meycauayan, Bulacan, testified that she is into buying and selling of gold since 2008 and the same is their family business. She buys gold from those who come to her place to sell gold. Before selling gold, the gold traders will ask first the prevailing price of gold at the BSP, because the gold buyers will buy at a rate lower than Php2.00 of the prevailing price per gram of gold. For example, if the sale of gold with the BSP on that particular day is Php1,500/gram, the selling price of the gold traders will be Php1,498. There is a Php2.00 margin because it will be used for the expenses of the sale transactions, employees and agents, and in the transportation and security. She sold gold to the BSP sometime in 2008. The transaction was easy because what was needed only was the accomplished application form and the cedula of the sellers. The BSP told her that she will not pay any tax because the taxes will be shouldered by the BSP. The amount of profit of gold traders depends on a lot of factors. Selling of gold to the BSP is not that profitable because of the expenses incurred in the processing of the sale. She executed a Judicial Affidavit[46] for this case.

The fifth witness, ***Maritess F. Encina***, Acting Deputy Director of Financial Services Group of the BSP, testified that she is familiar with the Certification dated April 1, 2011 because she was asked by her former boss, Simeona G. Llanes to prepare the documents based on the records that they have on file. She prepared the final form and the certification itself. The original records are the original documents that came from the other operating department of the SPC, in charge of receiving the gold. Their office is responsible in assuring that payments were made in accordance with all the data contained in the original documents. There are around 100 to 200 transactions involved in this case and she was able to see the original documents before she prepared the certification. The original documents are the Letters of Delivery and Sale, the Preliminary Assay Result, the reception notes, and the computation sheets. As the paying authority, their office is responsible in reviewing the documents presented to them to make sure that the documents are in accordance with the standards for payment.

On cross examination, she testified that the Letter of Delivery and Sale and other documents that were used for the Certification came from other offices of BSP and that the Letters of Delivery and Sale were executed by the sellers.

Accused's last witness, ***Arnel B. Magbag,***[47] a Revenue Officer presently assigned at the NID, testified that he requested records from the BSP in connection with the alleged gold transactions of the accused. The purpose of requesting said documents is to file cases against accused. He believed that accused transacted gold with the BSP and that accused earned income therefrom. Accused did not file her ITRs and did not pay taxes. He has no

[45] Testified on July 1, 2015.
[46] Exhibit "41".
[47] Testified on June 1, 2016.

2011

participation in the preparation of the Letters of Delivery and Sale presented by the prosecution.

On cross-examination, he testified that the BSP gave them not only the Letter of Delivery and Sale but also the certification detailing the sale of gold by the accused to the BSP.

On re-direct examination, he testified that he has no personal knowledge of the truth of the contents of the alleged certification and that he had no participation in the certification.

Mr. Magbag further testified that they were given confidential information that there are several gold traders, including accused, who sold gold to BSP, and they verified from their database that accused did not file any return from income tax purposes from 2005 to 2009. They were given a memorandum of assignment order by their Chief to conduct preliminary investigation with no contact to the taxpayer. He was able to finish the investigation and recommended the filing of tax evasion case with the DOJ. He is one of those who executed a judicial complaint.

On June 20, 2016, accused, through her counsel, filed a "Formal Offer of Evidence."[48] On June 30, 2016, plaintiff filed its "Comment/Opposition (To Accused's Formal Offer of Evidence)."[49] On July 20, 2016, the Court issued a Resolution[50] admitting Exhibits "38", "39, "40" and "41". The Court denied the other Exhibits offered by the accused, for failure to present the originals for comparison.

On August 24, 2016, plaintiff filed its "Memorandum."[51] On September 13, 2016, accused, through her counsel, filed a "Memorandum for the Accused."[52]

In the Resolution dated September 15, 2016,[53] the Court deemed this case submitted for decision.

The Issue

To the mind of this Court, there is only one main issue and that is whether or not accused is guilty of the crime charged and is liable to pay the taxes due.

[48] Docket, pp. 1804-1807.
[49] Docket, pp. 1928-1932.
[50] Docket, pp. 1934-1935.
[51] Docket, pp. 1936-1949.
[52] Docket, pp. 1950-1991.
[53] Docket, p. 1993.

2012

The Arguments

The plaintiff argues that it was able to prove guilt of the accused for the crime charged in the Information; that the plaintiff has proven that accused is a person required by law to file a return and declare all her income for taxable year 2005; and that the accused failed to rebut all the evidence presented by the plaintiff.

On the other hand, accused argues that the plaintiff failed to prove the alleged gold transactions between accused and the BSP; that the prosecution failed to prove the genuineness and due execution of the alleged Letter of Delivery and Sale; that the BSP must be held guilty of misrepresentation in this case; that the BSP did not pay excise taxes to the BIR for the subject period; that accused is being held liable for taxes; that accused has no willful and deliberate intention for failing to declare and pay taxes; that if accused will be convicted, it will violate her constitutional right to equal protection of the laws; and that accused must be acquitted of the crime charged.

The Ruling of the Court

The relevant provisions of the National Internal Revenue Code (NIRC) of 1997 invoked by the plaintiff are as follows:

> **Sec. 24. *Income Tax Rates.* –**
>
> **(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-**
>
> (1) An income tax is hereby imposed:
>
> (a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;
>
> *xxx*
>
> **Sec. 51. *Individual Return.* –**
>
> **(A) *Requirements.-***
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:

2013

(a) Every Filipino citizen residing in the Philippines;
(b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
(c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
(d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

xxx

Sec. 74. ***Declaration of Income Tax for Individuals.-***

(A) In General. – Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, self-employment income consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. *xxx*

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 any 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 (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx

2014

To establish the offense of failure to make or file ITR, the prosecution must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255 of the NIRC:

1. **The accused is a person required to make or file a return;**
2. **The accused failed to make or file a return at the time required by law; and**
3. **The failure to make or file a return was willful.**

Based on the allegations in the Information, the plaintiff must prove that accused is a registered taxpayer, who failed to file income tax return for taxable year 2005, for the income she earned in the sale of gold, and consequently she did not pay the income tax to the damage and prejudice of the Philippine government.

Accused earned income in her sale of gold to BSP in year 2005

To determine if accused earned income during the year 2005, the plaintiff must show that there was indeed sales transaction between accused and the BSP. To prove their case, the plaintiff offered in evidence the Letters of Delivery and Sale[54] executed by accused herself. The said Letters of Delivery and Sale were kept under the custody of the BSP. Plaintiff's witness, Ms. Derramas testified that a Letter of Delivery and Sale is a document accomplished by the vendor when selling and delivering gold to the BSP. The fact of sale was not denied by accused Caluag. Accused did not deny that she sold gold to the BSP. She did not deny that she executed the Letters of Delivery and Sale offered in evidence by the plaintiff. In fact, accused admitted that she sold gold to BSP since 2004. Accused and her witnesses also testified how a gold trader was paid by the BSP. In her testimony accused admitted that she earned a profit in her sale of gold to the BSP.

In the Judicial Affidavit[55] of accused, she testified that:

> "32. <u>Kung ganoon, maari mo bang sabihin kung bakit hinahabol ka ng BIR?</u>
>
> S: Sinisingil ako ng napakalaking buwis ng BIR sapag-aakalang kumita ako ng husto sa pagbebenta ng ginto. Ngunit maling-mali ito sapagka't halos wala nga akong kinita at kung mayroon man ay naopunta (sic) na ito sa malaking gastusin kaakibat ng pagbebenta ng ginto. Bukod doon, lumalabas din na nagbase ang BIR sa laki ng ibinayad ng BSP at hindi sa maliit na kinita nito, kung mayroon man.
>
> 33. <u>Bakit mali ang magbase sa gross sales?</u>

[54] Exhibits C to B[5]".

[55] Subscribed before Atty. Renato R. Devera on January 30, 2015. Exhibit "40".

S: Mali ito sapagka't hindi na isina-alang-alang ang puhunan at mga gastusin ng gold trader. Hindi taxable and puhunan at gastusin, kasi ang dapat lamang na buwisan ay ang kinita ng tao, sapagka't yun lamang ang nadagdag nap era sa kanya, kung mayroon man.

34. Alam mo ba kung bakit ginawa ito ng BIR?

S: Ito kasi ang pinakamadaling paraan para kasuhan ang sinuman at bahala na ang tao na magpaliwanag sa hukuman. Bukod dito, hindi din alam ng BIR kung kumita man ang taong hinahabol nila, katulad ng nangyari sa kasong ito laban sa akin. Nababaligtad ang sitwasyon sapagka't imbes na BIR ang magpapatunay na me kinita ang isang tao ay yung tao mismo ang bahalang pasubalian ang mga paratang laban sa kanya."

During her testimony[56] in Court on March 18, 2015, accused testified as follows:

ATTY. SILVERA

Madam Witness, on page 5 of your Judicial Affidavit, I asked you what were your transactions with BSP and you said in 2004 you heard from other gold traders that you could sell gold also to the BSP.

Q Do you remember having said so?

xxx

MS. CALUAG

A Kinausap ko po si Roselier. Nagpasama mo (sic) ako.

xxx

Q After you talked to Roselier Cruz, what happened next?

MS. CALUAG

A Nagpasama po ako kay Roselier para itanong sa Central Bank kung ano ang mga pasikot sikot at alamin kung paano ang pagbebenta kasi po interesado akong magbenta ng ginto.

JUSTICE VICTORINO

Who in the first place is Roselier C. Cruz? Sino po si Roselier?

MS. CALUAG

Si Roselier po isa sa dating nagbebenta, gold trader.

JUSTICE VICTORINO

Gold trader siya?

MS. CALUAG

[56] TSN pages 10-33.

Dati po siyang nagbebenta.

JUSTICE VICTORINO

Dati?

MS. CALUAG

Opo.

JUSTICE VICTORINO

Noong kinausap ninyo siya, hindi na siya nagbebenta?

MS. CALUAG

Nagbebenta benta din po.

JUSTICE VICTORINO

Nagbebenta pa rin siya noong kinausap ninyo siya?

MS. CALUAG

Nabalitaan ko po sa kanya kasing madaling magbenta sa Central Bank kaya po nagpasama ako sa kanya.

JUSTICE VICTORINO

Okay.

xxx

JUSTICE VICTORINO

Matapos ho na magpasama kayo kay Roselier Cruz, ano ho ang nangyari?

MS. CALUAG

Natuwa po ako kasi madali palang magpasok doon sa Central Bank ng ginto at kailangan din pala ng Central Bank ang ginto para maraming reserve.

xxx

ATTY. SILVERA

xxx

Q Paano magbenta ng ginto sa Central Bank or paano ang nangyayari o paano ang nangyari noon noong nagbebenta kayo?

MS. CALUAG

A Pagdating po namin sa Central Bank ito po ay titimbangin tapos po aasayin, ikikiskis. Pagka po ang assay ay 99.5, ito po ay pasado. Doon po sa araw ng rate na iyon tatanggapin mo, kasi po nakapasado iyong dinala ko kung nakapasang 99.5. Kung ito naman po ito ay mababa sa

2017

99.5, mababawasan po iyong presyo at tsaka po bago po iyong transaksyon namin ay asayin magbabayad po kami ng Php1,600.00 kada transaksyon.

xxx

JUSTICE VICTORINO

Tanong. Kailan ho kayo unang nagbenta sa Central Bank?

MS. CALUAG

Nagbenta po kami noong higit kumulang sa 2004.

JUSTICE VICTORINO

2004 nag-umpisa na kayong magbenta?

MS. CALUAG

Opo.

JUSTICE VICTORINO

Ano ho iyong regular na benta ninyo sa Central Bank? Magkano po ang nakukuha ninyo sa iyong regular, iyong regular, hindi iyong pinakamataas, hindi iyong pinakamababa. Iyong regular na bentahan ninyo. Magkano ang nabebenta ninyo? Regular lang, iyong regular.

MS. CALUAG

Kasi po halimbawa nagdala kami ng dalawang kilo
halimbawa po ang halaga noon ay 3M ...Interrupted

JUSTICE VICTORINO

Three Million?

MS. CALUAG

Oho.

JUSTICE VICTORINO

Dalawang kilo.

MS. CALUAG

Oho.

JUSTICE VICTORINO

Three million pesos. Iyon hong three million ay ibabayad sa inyo?

MS. CALUAG

2018

Iyon pong 90% noon kinabukasan po babalikan namin babayaran po iyong 90%. Iyon naman pong 10%, kung minsan po tatlong buwan, kung minsan po anim na buwan iyong 10%.

xxx

ATTY. SILVERA

With regard to Question No.28, your Honors.

Q Maari mo bang isalarawan nang maliwanag ang pagbebenta ninyo sa Central Bank at ano iyong sinasabi mo na BSP buying...Interrupted

JUSTICE VICTORINO

Isa isa. Isa isa ang tanong, Attorney, para hindi ka magkaroon ng objection.

ATTY. SILVERA

Yes, your Honors.

Q Maari mo bang ipaliwanag kung ano iyong BSP buying rate?

MS. CALUAG

A Ang buying po sa Central Bank, itatanong po muna, mababa po ng dalawang piso, may margin po na dalawang piso ang buying doon. Halimbawa po meron akong isang kilo Php1,500 ang per gram, bibilhin ko po ito ng Php1,498 para meron akong margin na dalawang piso.

ATTY. SILVERA

May I continue, your Honors?

Q Saan mo bibilhin ang isang gramo ng ginto sa halagang Php1,498 kung ang buying ng Central Bank ay Php1,500?

MS. CALUAG

A Bibilhin ko po ito kada gramo ng Php1,498 para pagpasok ko po sa Central Bank, kukunin po sa amin ng Php1,500 para meron kaming dalawang piso.

ATTY. SILVERA

Okay.

Q Iyon bang dalawang pisong sinasabi mo ay kita na o hindi pa?

MS. CALUAG

A Iyon po kasing dalawang piso nandoon po iyong ano iyong pagdala namin meron pong transaksyon kaming mga expenses na gasolina tapos po iyong assay na Php1,600 kada transaksyon doon din po kukunin sa dalawang piso.

2019

ATTY. SILVERA

Q Ano pa ang ibang gastusin ninyo kung meron pa man na ikakarga mo doon sa dalawang piso na kikitain mo sa isang gramo ng transaksyon sa ginto?

MS. CALUAG

A Kasi po e nagbabayad pa rin ako ng interes na ano e kaya po kinukuha pa iyong ...Interrupted

JUSTICE LIBAN

Interes na ano?

ATTY. SILVERA

Interes.

MS. CALUAG

Interes po halimbawa nangutang ako ng pera, meron pa rin pong interes na ibabawas doon. Iyon po ay kinukuha ko pa rin sa dalawang piso na kinikita tsaka po iyong asay na binabayaran namin.

ATTY. SILVERA

Q Ano ba iyong asay na binabayaran ninyo?

MS. CALUAG

A Kasi po paghatid namin ng ginto doon bago po nila kunin e inaasay pa po e kung pasadong, kung 99.9% e.

JUSTICE VICTORINO

Ibig sabihin ng "assay", kinikilatis.

MS. CALUAG

Kinikilatis.

JUSTICE VICTORINO

Kung anong uri ng ginto iyong binebenta niya. Ito ba ay 24k, ito ba ay 18. Ito ba ang 14 or 12 or 10.

xxx

JUSTICE VICTORINO

Kanina po sinabi ninyo na nagbabayad din kayo ng interes sa inutang ninyo ...Interrupted

MS. CALUAG

Opo.

2020

JUSTICE VICTORINO

Para sa inyong puhunan.

MS. CALUAG

Opo.

JUSTICE VICTORINO

Kelan ho ito nangyari na nangutang kayo? Alalahanin po ninyo kung anong taon kayo kinakasuhan dito. So kelan po nangyari ang pangungutang na ito?

MS. CALUAG

Kasi po noong ako'y nag-umpisa ...Interrupted

JUSTICE VICTORINO

Hindi po. Maraming beses po ba kayong nangutang?

MS. CALUAG

Pagka po kasi malaki laki iyong aking mabibili halimbawa po tatlong kilo kasi po kakapusin na ako sa capital nangungutang na po ako para mabili ko iyong binebenta ng mga ibang gold traders.

JUSTICE VICTORINO

Okay. Meron ho bang kasulatan ng mga inutang ninyo?

MS. CALUAG

Kasi po sa ginto ay ano lang e yuong salitaan lang nagkakatalo na po e.

JUSTICE VICTORINO

So wala kayong ebidensya na nangutang kayo para maging puhunan ninyo sa inyong pagtetrade ng gold?

MS. CALUAG

Kasi po sa ginto ganun e o kaya po halimbawa nangutang ako, iyon pong kukunin ko ipeprenda ko sa kanila. Pagka po ibebenta kukunin ko na para mabayaran ko sila ipahihiram naman po iyong ginto kong ipinerenda para mabayaran ko sila doon sa inutang ko.

xxx

ATTY. SILVERA

I am in Question No. 31, your Honors.

Q Sabihin mo nga sa amin kung ano ang naging resulta ng pagbebenta mo ng ginto sa BSP?

2021

MS. CALUAG

A Kasi po ang pagbebenta namin malaki po ang gastos sa ano e, malaki po ang gastos namin pagka dinadala namin sa BSP, manggagaling pa po sa Meycauayan padalang BSP panibagong gastos na naman iyon.

JUSTICE VICTORINO

Question. Ano po ang ebidensya ninyo na kayo ay gumastos? Meron ho bang resibo ng gasolina? Meron ho ba kayong resibo ng pinagbayaran ninyo ng interes? Meron ho ba kayong resibo noong sinasabing pagkilatis ng ginto ng BSP?

MS. CALUAG

Iyon po kasing bayad sa aming 10% e ...Interrupted

JUSTICE VICTORINO

Hindi po. Ito iyong gastos sinasabi ninyo kasi ang ibig nyong sabihin e oo nga nagbenta ako, binayaran ako ng ganito pero may gastos ako.

MS. CALUAG

Opo.

JUSTICE VICTORINO

Ang tanong. Meron ba kayong ebidensya dito sa mga ginastos ninyo? Tulad sa Central Bank sigurado ako na meron silang resibo doon sa binayaran ninyo sa pagkilatis, hindi po ba sabi nyo nagbayad kayo sa pagkilatis ng ginto, meron ba kayong resibo? Para maibawas doon sa sinasabing kinita ninyo?

MS. CALUAG

Iyon pong Php1,600.00 pagka po kami binayaran imaminus na po iyong Php1,600.00 na inasay.

JUSTICE VICTORINO

So meron ho kayong kasulatan na ganon?

MS. CALUAG

Kasi po iyong resibo ...Interrupted

JUSTICE VICTORINO

Hindi. Tanong lang. Pakinggan nyo lang ho iyong tanong ko.

MS. CALUAG

Opo.

2022

JUSTICE VICTORINO

Meron kayong kasulatan na noong binayaran kayo ng ganito sa pinagbilhan ninyo e ibinawas na iyong expense o gastos sa pag-asay o pagkilatis?

MS. CALUAG

Pagka po binigyan kami ng resibo inaawas na po iyong ...Interrupted

JUSTICE VICTORINO

Asan iyong resibo na iyon? Meron ka ba noon?

MS. CALUAG

Maghahanap po ako sa amin kasi iyong mga resibong ano e naano na po ng ondoy na ...Interrupted

xxx

JUSTICE BAUTISTA

May tanong ako. May tanong ako. Ayon sa iyong salaysay, alam mo na malaki ang gastusin sa pagbili mo ng gold sa BSP. Malaki ang gastusin Mo , sabi Mo. Ngayon ba't ka pa nagbebenta ng gold sa BSP Malaki pala ang gastusin mo? Bakit ka pa ...Interrupted

MS. CALUAG

Kasi po madali pong magbenta, maluwag ...Interrupted

JUSTICE BAUTISTA

Madali nga pero Malaki ang gastusin mo sabi mo. Nalulugi ka dahil malaki ang gastusin mo sabi mo. Ba't ka pa nagbebenta ng palugi?

MS. CALUAG

E kahit po kasi meron konting konting natitira kasi po iyon lamang ang aming hanapbuhay na, mula't sapul ito po ang hanapbuhay namin ...Interrupted

JUSTICE BAUTISTA

Kahit palugi? Kahit palugi?

MS. CALUAG

Meron pong konting konting natitira.

JUSTICE BAUTISTA

Sabi mo sa salaysay mo malaki ang gastusin mo? Malaki ang gastusin sa pagkuha ng ginto sa Meycauayan. Sabi mo palugi dahil Malaki ang gastusin Mo tapos nagbebenta ka pa sa BSP, bakit ganon?

MS. CALUAG

Kasi po ito ang kinamulatan namin hanapbuhay kahit ho konting konti iyong, pang-ano lang sa araw araw pwede e na po sa amin.

JUSTICE BAUTISTA

Pwede na iyong palugi?

MS. CALUAG

Kahit po konting konti na lang ang natitira.

JUSTICE BAUTISTA

May natitira, hindi palugi. Kasi sa sinumpaang salaysay mo ang sabi mo sa Question 31, malaki ang gastusin mo. Hindi ka kumikita dahil Malaki ang gastusin mo. Ang tanong dito, bakit ka pa nagbebenta, palugi pala? Ano ang sagot mo doon sa tanong?

MS. CALUAG

Meron naman pong natitira kaunti lang iyon pong pang-ano namin sa araw araw.

JUSTICE BAUTISTA

Meron pa. Meron pa palang kinikita.

MS. CALUAG

Kahit po kaunti.

JUSTICE BAUTISTA

Kaunti. Gaano kalaki iyong kaunti na 'yon? Gaano kalaki? Piso? 50 sentimos per gramo? Ano?

MS. CALUAG

Kasi po iyong isang kilo e ano e Php2,000.00 po ang kinikita.

JUSTICE BAUTISTA

Php2,000 ang kita mo.

MS. CALUAG

Aalisin po iyong Php1,600.00. Iyon pong Php400.00 na natitirang panggastos sa pang-araw araw malaking bagay po sa amin.

JUSTICE BAUTISTA

Magkano natira s'yo?

JUSTICE LIBAN

2024

Php400.00.

MS. CALUAG

Php400.00 po.

JUSTICE BAUTISTA

Php400.00 lang araw araw.

JUSTICE VICTORINO

Araw araw ba kayong nagbebenta sa Central Bank?

MS. CALUAG

Hindi naman po. Pagka po kami nakaipon ng pangangalakal na halimbawa pwede nang ibenta, iniluluwas na po namin.

JUSTICE VICTORINO

Lagi mong sinasabing "namin". Sino iyong kasama mo may "namin" ka. Hindi mo sinasabing iniluluwas ko. Sabi mo niluluwas "namin". Sino iyong "namin"?

MS. CALUAG

Kasi po iyong aking inuutusan si Roselier, iyon na po ang inaano ko. Kung minsan po ...Interrupted

JUSTICE BAUTISTA

Through Roselier iyong sa'yo ...Interrupted

MS. CALUAG

Opo.

JUSTICE VICTORINO

So lagi mong kasama iyong Roselier Cruz?

MS. CALUAG

Kung minsan po siya lang mag-isa. Bihira po akong sumama. Inuutos ko lang po sa kanya.

JUSTICE VICTORINO

Pero ang kalakal ay galing sa inyo?

MS. CALUAG

Opo.

2025

Admissions made during hearing of the case or are reduced into writing and signed by the person making admission are judicial admissions pursuant to Section 4, Rule 129 of the Rules of Court.[57]

Hence, accused is bound by her admissions that she incurred income in her sale of gold to the BSP.

Section 32 of the NIRC defines gross income as "all income derived from whatever source, including but not limited to xxx (2) gross income derived from the conduct of trade or business or the exercise of a profession, xxx." Accused admitted that she is engaged in the business of selling and buying gold since she was young and that it is their family business. She earned income in her business as a gold trader. Consequently, she is obligated to declare her income and to file income tax returns to the BIR. Such declaration is specifically mandated in Sections 24, 51 and 74 of the NIRC. Accused is a Filipino citizen and she is a resident of Saluysoy, Meycauayan, Bulacan. She is therefore obliged to declare her income for taxable year 2005.

The Certification,[58] which is the subject of the testimony of Ms. Benjamin and Ms. Encina, reads as follows:

"C E R T I F I C A T I O N

This is to certify that total annual gold sales of ***MS. FELONILA CALUAG*** to the Bangko Sentral ng Pilipinas for the years 2005-2009 are as follows:

YEAR	CONTENTS PAID (IN TR. OZ.)	VALUE	REFINING CHARGES	NET PAYMENTS
2005	10,032.456	P 243,431,570.18	P 344,439,48	P 243,087,130.70
2006	9,403.056	286,967,743.48	324,034.40	286,643,709.08
2007	6,589.311	210,542,016.79	228,497.21	210,313,519.58
2008	8,895.066	346,840,356.26	314,355.28	346,526,000.98
2009	4,249.120	186,482,588.24	147,066.34	186,335,521.90
TOTAL	39,169.009	P 1,274,264,274.95	P 1,358,392.71	P 1,272,905,882.24

This Certification is issued as requested by the Assistant Commissioner of the Enforcement Service of the Bureau of Internal Revenue.

(Sgd.) **SIMEONA G. LLANES**
Deputy Director"

[57] *Judicial Admissions.*- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
[58] Exhibit "N5".

2026

In her attempt to refute the evidence presented by the plaintiff, accused presented Maritess F. Encina, an employee of the BSP.

Ms. Encina testified[59] as follows:

ATTY. SILVERA

Q You were earlier issued a subpoena to produce and to testify on a certification issued by the BSP dated April 1, 2011, do you recall that, Madam Witness?

MS. ENCINA

A Yes, sir.

ATTY. SILVERA

Q Tell us whether or not you are familiar with the certification dated April 1, 2011?

MS. ENCINA

A I am familiar with this document.

ATTY. SILVERA

Q I am showing to you a document which is part of the offer of the prosecution and marked as Exhibit N[5], would you please tell us if this is the same certification that you said you are familiar with?

MS. ENCINA

A Yes, sir this is the same certification.

ATTY. SILVERA

Q Tell us whether or not. . . .

JUSTICE VICTORINO

In the first place, why are you familiar with this certification?

MS. ENCINA

A I am familiar with the certification because I was asked by my former Boss then Simeona G. Llanes to prepare the documents based on the records that we have on file.

[59] TSN dated February 3, 2016, pp. 10-19.

2027

JUSTICE VICTORINO

So, you were the ones who prepared that certification?

MS. ENCINA

I prepared the final format and the certification itself.

ATTY. SILVERA

Q You said that you were asked to prepare based on records, what are these records?

MS. ENCINA

A These are the original documents that came from the other operating department of the SPC, who are in charge of receiving the gold, as far as we are concerned being with the Accounting Department, our main responsibility for this certification is to assure that the payments were made in accordance with all the data that was contained in the original documents that were forwarded to us.

ATTY. SILVERA

Q How many transactions, if you know are we talking about, let us say for the year 2005, if you know?

MS. ENCINA

A 100 plus, 100 to 200.

ATTY. SILVERA

You are not sure?

MS. ENCINA

A Most probably it is around that number, I cannot really give you the exact number, but I have gone over the records and it is about that number.

ATTY. SILVERA

Q So you merely relied on the records given by the other operating units, is that what your assumption of what you did, Madam Witness?

MS. ENCINA

A Because the records. . . . .(interrupted)

ATTY. SILVERA

Q You merely relied, yes or no?

2028

MS. ENCINA

A Yes.

ATTY. SILVERA

Q So, all the entries here from year 2005 to 2009, with regard to the contents paid the value, the refining charges and the net payments, all of these entries came from the documents provided by the other operating units?

MS. ENCINA

A From the original documents that were signed and acknowledged by the client and were processed by the department concerned were forwarded to us for processing and payment.

JUSTICE VICTORINO

Were you able to see these original documents that you were saying?

MS. ENCINA

Yes, Your Honor.

JUSTICE VICTORINO

Before you prepared the certification?

MS. ENCINA

Yes.

xxx

JUSTICE BAUTISTA

What are these original documents?

MS. ENCINA

The documents that I am talking about are the Letter of Delivery and Sale, the Preliminary Assay Result, the reception note, the computation sheets. That is all for the advance payment, and then for the final payment. . . . .(interrupted)

JUSTICE BAUTISTA

No invoices?

MS. ENCINA

The practice of BSP is for the seller to sign a reception note and that would serve as our evidence of receipt of their gold accompanied by their delivery of letter and sale which is also signed by the seller himself.

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JUSTICE BAUTISTA

That is equivalent to a Delivery receipt?

MS. ENCINA

It is almost equivalent to a delivery receipt.

ATTY. SILVERA

Q Last question, so you mentioned that you based this certification from the Letter Delivery and Sale report and Assay Report and other documents including computation sheets?

MS. ENCINA

A Yes, sir.

ATTY. SILVERA

Q Now, do you have any participation in the preparation of any of these documents which were reflected and which were contained in the certification, Madam Witness?

MS. ENCINA

A As the paying authority, our main responsibility is to review the documents that are presented to us and to make sure that these are in accordance with the standards for payment.

ATTY. SILVERA

Q So, only review, but you have no personal participation in the preparation?

MS. ENCINA

A Yes, sir.

On cross examination, she testified as follows:

ATTY. TORRES

Q Earlier in your direct, you said that you are familiar with Exhibit N^5, why are you familiar with Exhibit N^5?

MS. ENCINA

A Because I was the one who made it.

ATTY. TORRES

Q You were the one who made it because?

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MS. ENCINA

A I was under the instruction of my former boss Simeon Llanes.

ATTY. TORRES

Q You said that the Letters of Delivery and Sale, the other documents that were used for the certification came from other offices of BSP?

MS. ENCINA

A Yes, sir.

ATTY. TORRES

Q Is it correct to say that those other offices and your offices are all part of BSP?

MS. ENCINA

A Yes, sir.

ATTY. TORRES

Q Who prepares the Letters of Delivery and Sale?

MS. ENCINA

A The sellers themselves.

xxx

JUSTICE VICTORINO

Just a point of clarification, only after you have with you all the documents like the delivery receipt, assay report that the BSP will pay the seller?

MS. ENCINA

A Yes, Your Honor.

JUSTICE VICTORINO

And the payment will be depended on (sic) your review of the documents forwarded to you?

MS. ENCINA

Yes, Your Honor.

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JUSTICE VICTORINO

So the BSP will only pay only after your review of all the documents forwarded to you by the different offices of the BSP?

MS. ENCINA

Your Honor, the procedure is that the document shall be forwarded to us for review, for funding and then we shall forward the same again to the originating department for approval and then it will come back to us for payment.

JUSTICE VICTORINO

So the last step would be your still your office again for the payment for the transactions involved?

MS. ENCINA

Yes, Your Honors.

Surprisingly, the testimony of Ms. Encina strengthened the allegations against the accused because Ms. Encina validated and confirmed the testimony of Ms. Yolanda J. Benjamin with regard to the existence of the authenticity of the Certification signed by Simeona G. Llanes, and that accused had gold sales transactions with the BSP. Ms. Encina testified that she was the one who prepared the Certification; she based the Certification according to the entries in the original documents forwarded to them by the other offices of the BSP; she saw the Letters of Delivery and Sale signed by Felonila G. Caluag; and that their office is in charge of paying the seller of gold.

Accused did not file her annual ITR for taxable year 2005

Plaintiff's witness Teogenes T. Abrigo, Jr. of Revenue District Office No. 25B (Sta. Maria, Bulacan) testified that upon the instruction of Deputy Director Estela V. Sales to produce tax information regarding accused, he utilized the BIR ITS and he discovered that accused is only registered with the BIR only for a One-Time Transaction, and there was no file with the BIR that accused filed an Annual ITR for taxable year 2005.

The Certification[60] reads as follows:

<u>C E R T I F I C A T I O N</u>

"THIS IS TO CERTIFY that based on ITS generated registration of this office, Felonila Zamora Caluag of 438 Salusoy,

[60] Exhibit "D[5]".

City of Meycauayan, Bulacan with TIN: 173-100-004-000 is registered for Tax Type: One-Time Transaction, effective September 20, 2000.

FURTHER CERTIFY that there is no record on file in this office to show she filed Annual Income Tax Returns (ITRs) and Value-Added Tax (VAT) returns for years 2005 to 2009.

Issued this 14th day of April 2011."

The Certification issued by Mr. Abrigo, marked as Exhibit "D5" was never refuted during the trial of this case.

Again, accused's witness, Mr. Arnel B. Magbag, testified that according to his investigation, he found that accused did not file an ITR for taxable year 2005. He corroborated Mr. Teogenes T. Abrigo, Jr.'s testimony that accused did not file her ITR for taxable year 2005.

Mr. Masbag testified[61] as follows:

ATTY. SILVERA

Q Mr. Witness, you said that you are part of the investigating team... interrupted

xxx

Q that looked into the possible tax liabilities of the accused, is that correct?

MR. MAGBAG

A Yes, Sir.

ATTY. SILVERA

Q And if I am correct, you requested for records from the BSP as far as the alleged gold transactions of the accused were concerned, is that correct?

MR. MAGBAG

A Yes, sir.

ATTY. SILVERA

Q And your purpose for requesting these documents is to file cases against the accused?

[61] TSN dated June 1, 2016, pp. 14-16.

MR. MAGBAG

A Yes, sir.

ATTY. SILVERA

Q Because you believe that the accused transacted gold with the BSP?

MR. MAGBAG

A Yes, sir.

ATTY. SILVERA

Q And you also believe that she earned income?

MR. MAGBAG

A Yes, sir.

ATTY. SILVERA

Q And it is also your submission that she did not file her income tax returns and did not pay taxes?

MR. MAGBAG

A Yes, sir.

From the foregoing, the plaintiff has satisfactorily proven that there is no record of an ITR filed within the required period in the Revenue District Office of the BIR where accused resided.

Hence, it is an undisputed fact that accused did not file her ITR for taxable year 2005.

Accused willfully failed to file her Annual ITR for taxable year 2005

Now, did accused willfully fail to file her ITR for taxable year 2005 and pay the corresponding income tax due, to the damage and prejudice of the government?

Based on the evidence presented, it is clear that accused transacted with the BSP, sold gold to the BSP, received payment from the sale of gold, and earned income from her sale of gold.

However, accused repeatedly argued that only a small amount of profit was earned or sometimes she even lost profit because of the expenses incurred

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in the sale of gold. The Court is not convinced by the self-serving statements of accused. Her declarations during her testimony reveal that she profited from her sale of gold to the BSP. Accused cannot be permitted to invoke an excuse that she did not earn profit to exculpate her from criminal liability. The transactions in this case involve millions of pesos. It is highly improbable that accused did not earn income after being paid the amount of Php243,087,130.70. Hence, it is logical that a more stringent application of the mandate of our tax laws be applied to accused. The omission on the part of accused to file her ITR, knowing that she makes money out of her sale of gold to the BSP is tantamount to a willful non-filing of a return.

An act or omission is "willfully" done, if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to obey or to disregard the law.[62]

Clearly, to attribute to accused a "willful failure to file an ITR" and pay the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally, and with the specific intent not to pay the tax. In other words, it must be shown that accused was aware of her obligation to file ITR and to pay the tax due, but she nevertheless voluntarily, knowingly, and intentionally failed to file the ITR and pay the corresponding taxes.

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[63]

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 appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[64]

CONCLUSION

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the prosecution was able to

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[62] Black's Law Dictionary, 6th Edition, p. 1599.
[63] Leonila Batulanon vs. People of the Philippines, G.R. No. 139857, September 16, 2006
[64] People of the Philippines vs. Nenita B. Hu, G.R. No. 182232, October 6, 2008 citing People vs. Corpuz, 459 Phil 100.

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establish the guilt of the accused beyond reasonable doubt on the crime charged.

As regards the penalties, accused was charged for violation of Section 255 of the NIRC. The imposition of a fine of Php10,000.00 is proper. Also, the imposition of the penalty of imprisonment of one (1) year is also proper under the circumstances. This is without prejudice to Section 280 of the NIRC, which provides for the imposition of subsidiary penalty in case the accused has no property to pay such fine.

The civil liability of the accused in this case is deemed instituted herewith pursuant to R.A. No. 1125, as amended by Section 7(b) 1 of R.A. No. 9282, which provides that "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."

Section 253(a) of the NIRC provides that "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."

WHEREFORE, premises considered, judgment is hereby rendered finding accused **FELONILA Z. CALUAG**, guilty beyond reasonable doubt, of violating Section 255 of the National Internal Revenue Code of 1997, as amended, and she is hereby sentenced to suffer a penalty of one (1) year imprisonment and is ordered to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or is unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

As regards the civil liability, accused is ordered to pay the income tax due in the amount of Php77,746,481.82 as basic deficiency income tax and Php38,873,240.91 as 50% surcharge.

In addition, accused is ordered to pay 20% deficiency interest on the basic deficiency income tax of Php77,746,481.82 and 20% delinquency interest (on the total amount comprising of the basic deficiency income tax, 50% surcharge and 20% deficiency interest) per annum counted from April 15, 2006 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997 as amended.

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SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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

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