REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case NO. O-014
	For: Violation of Section 255 of R.A. No. 8424
	Members:
- versus -	UY, *Chairperson;* and FABON-VICTORINO, *JJ.*
	Promulgated:
JOEL C. MENDEZ Accused.	FEB 10 2016 ; 9:20 a.m.

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DECISION

FABON-VICTORINO, *J.*

In the original Information dated October 10, 2005, accused Joel C. Mendez was charged with Violation of Section 255 of Republic Act No. 8424, as amended. It reads as follows:

> That on or about the 15th day of April, 2002, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center", with principal office at No. 31 Roces Avenue, Quezon City, and with several branches in Quezon City, Makati, San Fernando and Dagupan City, did then and there, wilfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau of Internal Revenue for the taxable year 2001, to the damage and prejudice of the Government in the

> estimated amount of P1,089,439.08, exclusive of penalties, surcharges and interest.
>
> CONTRARY TO LAW.

After review of the record of the case, the Court, on February 14, 2006, found no probable cause against accused and dismissed the case without prejudice. The dismissal was however reconsidered and set aside at the instance of the People in the Resolution dated August 22, 2006.

Thereafter, accused was granted provisional liberty and the warrant for his arrest was lifted and set aside upon posting of the required bail bond, per Resolution dated September 13, 2006.

Accused moved for the reconsideration of the Resolution of August 22, 2006 which reconsidered the dismissal of the case against him but the same was denied for lack of merit in the Resolution of November 6, 2006.

On March 5, 2007, accused was arraigned during which he pleaded "Not Guilty" of the offense charged. Consequently, the Court set the case for Preliminary Conference on March 19, 2007.

In the meantime, the Supreme Court, on March 8, 2007, dismissed on procedural ground the Petition for Certiorari and Prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction instituted by accused against the Resolution of August 22, and November 6, 2006. It ruled that the remedy availed of by accused was erroneous and evidently used as a substitute for the lost of appeal. Moreover, it was filed beyond the reglementary period.[1]

On June 12, 2007, the Court, at the instance of the prosecution and without any objection from accused [2] allowed the amendment of the Information on the ground

[1] *Rollo*, p. 331.
[2] Record, p. 492.

that it was merely formal and would neither change the nature of the accusation nor adversely affect the rights of accused. The Amended Information reads as follows:

> That on or about the 15th day of April 2002, at Quezon City, and within the jurisdiction of this Honorable Court, the above named accused, doing business under the name and style of Weigh Less Center/Mendez Medical Group, with several branches in Quezon City, Muntinlupa City, Mandaluyong City, and Makati City, did then and there, wilfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau of Internal Revenue for income earned for the taxable year 2001, to the damage and prejudice of the Government in the estimated amount of Php1,089,439.08, exclusive of penalties, surcharges and interests.
>
> CONTRARY TO LAW.

Accused challenged the foregoing ruling, but the same was denied for lack of merit on August 13, 2007.

On October 17, 2007, accused filed with the Supreme Court a Petition for Certiorari and Prohibition (with prayer for issuance of TRO and/or Preliminary Injunction) under Rule 65 of the Rules of Court docketed as G.R. No. 179962, attributing grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the Court when it allowed the amendment of the Information and subsequently denied his plea for reconsideration.[3]

On December 5, 2007, the Court approved the parties' Joint Stipulation of Facts and Issues (JSFI) with the following stipulations:

1. Accused, Dr. Joel C. Mendez, is a duly registered taxpayer with Tax Identification No. 120-644-

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[3] *Rollo*, p. 686.

683-000 with office address at No. 31, Roces Avenue, Quezon City;

2. Carla Yadao, Cherry Perez and Richard Bianan are employees of accused;

3. As certified by Gwendolyn Gonzales, Dealer Services Manager of Primus Finance and Leasing, Inc., accused has an outstanding car loan as of April 11, 2005, with Primus and the loan is secured by a chattel mortgage of a 2001 Ford Lynx with plate no. XAR-979; Serial No. 7D5FF-001652; Motor No. PEIBVFK-111AD00810, whose original Land Transportation Certificate of Registration and Official Receipt are under Primus' safekeeping.

4. A Contract of Lease was executed between the accused (as Lessee) and Ma. Lita Gregorio (as Lessor) on July 12, 2001 in Quezon City, Metro Manila, Philippines, the term of which commenced on August 14, 2001 and will expire on August 14, 2007 covering a 220 square meter area more or less for the purpose of establishing a health clinic and art gallery located at 31-G A. Roces Ave., Quezon City."

In support of the accusation, the prosecution presented as witnesses Attorney Grace Belarmino Cruz, Alex C. Perez, Arabelle Petilla, Elias Olasiman, Jose Albert Pascual, Jose H. Villareal, Perlita R. De Lara, Joseph Rodriguez, Attorney Salvador Alquino Jr., Clavelina S. Nacar, Alexander Martinez, and Ma. Lita D. Gregorio.

For his defense, accused presented Cherry A. Perez, Engineer Rodolfo Tolentino, and himself as witnesses.

On May 19, 2010, the instant case was submitted for decision with accused' Memorandum *sans* any from the prosecution, despite notice.

On April 19, 2010, the Office of the Solicitor General (OSG), in compliance with the Supreme Court Resolution of October 26, 2009 in G.R. No. 179962, filed a Manifestation adopting the People's Memorandum dated January 11, 2010, filed by the Bureau of Internal Revenue Special Prosecutors.

Subsequently, in the Resolution dated July 5, 2010, the Supreme Court noted the cited Manifestation filed by the OSG and directed the Clerk of Court of this Court to elevate the complete records of the case within ten (10) days from notice.[4]

On September 7, 2010, the Court, in compliance with the Supreme Court's directive dated July 5, 2010, directed the Clerk of Court to immediately elevate to the Supreme Court the complete record of the instant case for its review relative to the Petition for Certiorari and Prohibition filed by accused and held in abeyance further proceedings in the instant case until notice.

On June 11, 2014, the Supreme Court dismissed accused' Petition for Certiorari and Prohibition which became final and executory on May 29, 2015.

On November 4, 2015, the record of the instant case was transmitted back to the Court with a copy of the Decision dated June 11, 2014 and the Entry of Judgment.

Hence, this decision.

Evidence for the Prosecution

Attorney **Grace Belarmino Cruz** was first to take the witness stand. She testified that as Revenue Officer assigned at the National Investigation Division (NID) of the Bureau of Internal Revenue (BIR) she conducts audit and investigation on the tax liabilities of the taxpayers and submits reports on the result thereof.[5] In the Memorandum of Assignment[6] dated September 8, 2004, NID Chief Atty. Arnel SD. Guballa directed her to conduct an investigation on the anonymous letter-complaint for non-issuance of

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[4] *Rollo*, p. 1170.
[5] Exhibit "UU".
[6] Exhibit "A" and "A-1".

official receipt by accused filed by his client with Revenue Region No. 8.

Based on her Memorandum Report dated September 24, 2004 [7], Deputy Commissioner Buñag issued Letter of Authority (LOA) No. 00002438 on November 8, 2004, authorizing her, Michael B. Caymo, Melvin Mondigo, and group supervisor Samuel Camara to conduct an investigation on the tax liability of accused for taxable years 2001, 2002 and 2003.[8]

On November 10, 2004, the LOA and the First Notice were served upon accused through his employee Cherry Perez.[9] This was followed by a Second Notice when accused failed to submit the required documents.[10] Again he failed to comply. Hence, a Final Request for Presentation of Documents dated January 11, 2005 was served upon him in his office through Carla Yadao.[11] When the efforts proved futile, she obtained third party information from the BIR, Land Transportation Office[12] (LTO), Securities and Exchange Commission [13] (SEC), Philippine Daily Inquirer, [14] Philippine Star, [15] Bureau of Immigration and Deportation [16] (BID), Philippine Airlines,[17] (PAL) and Office of the Clerk of Court of Quezon City.[18] She also took pictures depicting accused conducting business even prior to taxable year 2001.[19]

On February 22, 2005, BIR Revenue District Officer of RDO No. 39 **Clavelina S. Nacar** issued a Certification that per the BIR Integrated Tax System (ITS), accused, with TIN No. 120-644-683-000, has no record of ITR filed with the BIR for taxable years 2001 to 2003. Accused registered only on May 6, 2002, hence, he has no record of any tax returns filed in their office prior to the said date.

[7] Exhibits "VV" to "VV-7".
[8] Exhibit "B".
[9] Exhibit "B-5".
[10] Exhibit "D".
[11] *Exhibit* E-1.
[12] *Rollo, Exhibits* "HH", "JJ", "II", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "EE-1", "FF" and "GG".
[13] *Rollo, Exhibits* "LL" to "LL-5", "MM" to "MM-5", "NN" to "NN-5", "OO" to "OO-5", "PP" to "PP-5", "QQ" to "QQ-5", "RR" to "RR-5", "SS" to "SS-5" and "TT" to "TT-5".
[14] *Exhibit* "T"
[15] *Exhibits* "N", "P" to "P-7", "Q", "R" and "S".
[16] *Exhibit* "U".
[17] *Exhibits* "V" to "V-10".
[18] *Exhibits* "M" to "M-5".
[19] *Exhibits* "K" and "L".

A similar certification was issued on March 9, 2005 by the Chief of the Data Processing Section of RDO 39, South Quezon City **Alex C. Perez,** who confirmed in open court that based on the ITS of the BIR, accused has no available record on file from 1995 to 2000.

On February 28, 2008, the prosecution presented Jose H. Villareal, Perlita De Lara, and Joseph Rodriguez.

Witness **Jose H. Villareal** testified that as Vice President for Finance of the Philippine Daily Inquirer, he issued a Certification[20] dated February 26, 2006 based on the record of transactions for 2001 at the instance of the BIR pertaining to the direct advertising placements made and paid by the Mendez Group of Company or the Weigh Less Center, owned by accused.

Perlita De Lara, the Accounting Supervisor of the Philippine Star, testified that she issued a Certification[21] dated February 28, 2006, stating that accused advertised his businesses particularly the Weigh Less Center and Mendez Medical Group and Other Related Beauty Skin Products for the taxable years 2001 to 2005. She based the certification on the ad placement record of the Marketing Resource Department of Philippine Star.

Photo Library staff of Philippine Star, **Joseph Rodriguez** testified that he issued a Certified True Copy[22] of the advertisements placed by accused. The said advertisement was first published on April 16, 2001 with several follow-ups thereafter.

Revenue Officer IV assigned at the National Investigation Division (NID) of the BIR **Alexander Martinez** testified that by virtue of the Memorandum of Assignment dated March 3, 2005, he assisted the group of Attorney Grace B. Cruz in the evaluation of documents pertaining to the tax liability of accused. In relation thereto, he prepared a Memorandum Report dated March 4, 2005[23] stating

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[20] *Exhibits* "T" to "T-7".
[21] *Exhibits* "N" to "N-1", "O" to "O-4", "P" to "P-7".
[22] *Exhibits* "R" and "S".
[23] *Exhibits* "YY" to "YY-26".

accused' non-filing of ITR for 2001, 2002 and 2003. This finding was duly supported by the certifications issued by RDO Clavelina S. Nacar and Asst. Commissioner for Information Systems Operation Service Alberto A. Pio de Roda. However, the Certification dated February 28, 2005[24] issued by RDO Joseph M. Catapia of Calasiao, Pangasinan, revealed that accused filed ITR for 2003, Withholding Tax Return from May to December, 2003, representing his income from his branch located at Mendez Center, CFI, Citimall, Lubao District, Dagupan City to the exclusion of his total income from other sources and branches.

In any event, he prepared the following Computation of Deficiency Tax[25] of accused for the taxable year ending December 31, 2001, using the "Net Worth Method" of investigation which is applied when a taxpayer failed to file an ITR, thus:

JOEL CORTEZ MENDEZ
Computation of Deficiency Tax
December 31, 2001

EXPENDITURES/EXPENSES INCURRED BY THE TAXPAYER
DURING THE YEAR (MONEY SPENT OR APPLIED)

1	ADVERTISEMENTS				
	Philstar Daily, Inc.			P	357,550.46
	Philippine Daily Inquirer, Inc.				
	Direct Ads	P	420,899.45		
	Ad Logic, Inc.		526,898.33		
	Asatsu Advertising		18,611.05		
	Total				966,408.83
2	RENTAL				
	Roces Branch				
	2 months advance rental (P27,000.00 x 2)	P	54,000.00		
	2 months security deposit (P27,000.00 x 2)		54,000.00		
	August 15, 2001 to December 31, 2001 (P27,000.00 x 4.5 mos.)		121,500.00		
	Total				229,500.00
3	FORD LYNX (PLATE NO. XAR – 979				
	Ford Edsa invoice no. 2386 dated Nov. 6, 2001				624,780.00
4	LEASEHOLD IMPROVEMENTS (ROCES BRANCH)				1,531,660.03
5	FOREIGN TRAVEL				
	Manila - Hong Kong / Hong Kong – Manila				
	PAL Ticket No. 079-3570170836-2				
	December 20, 2001 (US$ 424.24 x P50)				21,212.00
TOTAL					3,731,111.32
Less: Sources of funds					-
Adjusted Gross Income					3,731,111.32
Less:					
	Less: Personal exemption – single	P	20,000.00		
	10% optional standard deduction		373,111.13		

[24] *Exhibits* "YY-27" to "YY-28".
[25] *Exhibit* "AAA".

Total			393,111.13
Corrected Taxable Income			P 3,338,000.19
Tax Due thereon			
P 500,000.00	P 125,000.00		
2,838,000.19 x 32%	908,160.06		
P 3,338,000.19			
2001 DEFICIENCY INCOME TAX (BASIC)			**P 1,033,160.06**

From the foregoing, the deficiency income tax of accused based on available documents secured from several government agencies amounted to Php1,033,160.61.[26]

Subsequently, they prepared a Complaint-Affidavit for endorsement by the BIR Commissioner to the Department of Justice,[27] which together with the Letter-Referral dated March 7, 2005, was sent to Secretary of Justice.[28] A preliminary investigation by the state prosecutor followed.

The prosecution also presented the following witnesses who identified the Certifications they respectively issued upon request of the BIR:

1. **Arabelle Petilla** - The Chief of the Records Section of the LTO issued a Certification and Letter to Atty. Arnel SD. Guballa dated February 28, 2005, indicating that accused had one (1) vehicle model 2001.[29]

2. **Elias Olasiman** - Immigration Officer and Authorized Officer of the Verification and Certification Unit of the Bureau of Immigration issued a Certification dated October 11, 2006 showing that accused arrived from Hong-Kong on December 24, 2001 and from France on December 31, 2001.[30]

3. **Jose Albert Pascual** - LTO evaluator at Camp Aguinaldo Extension Office issued a certified photocopy of vehicle registration of Ford Lynx

[26] Pages 37-49, TSN dated April 9, 2008.
[27] *Exhibits* "F" to "F-7".
[28] *Exhibit* "ZZ" to "ZZ-3".
[29] *Exhibits* "W" to "W-4".
[30] *Exhibit* "U-5".

bearing Plate No. XAR-979, Sales invoice dated November 6, 2001 and certified copy of the Deed of Absolute Sale of Ford Lynx 2001, all issued/executed in favor of accused. [31] He identified his signature in Official Receipt No. 93251013 dated November 19, 2001.

4. Attorney **Salvador Alquino, Jr.** - The in-house counsel and head of Internal Legal Services of Philippine Air Lines (PAL) issued a Certification dated July 19, 2005, showing that accused travelled to Hong-Kong on December 24, 2001, with ticket cost of US$185.50.[32]

Prosecution's last witness **Ma. Lita D. Gregorio** testified that on July 12, 2001, she executed a Lease Contract[33] with accused over her property located at No. 31 G. Roces Ave., Quezon City to be utilized by accused for rendering health services to his clients.

Evidence for Accused:

Witness **Cherry Perez** testified that accused initially hired her as medical staff in 2004 to monitor the needs of the clients. Later she became an accounting staff tasked to secure DTI permit, Barangay clearance and to file BIR No. 0605 in relation to the businesses of accused. Sometime in November 2004, the BIR served the First Notice to Submit Documents with an LOA. She at first refused to receive them but later relented but endorsed the documents to their accountant Richard Bianan. She executed a Joint-Affidavit dated October 2, 2006 in connection with instant case.[34]

Engineer **Rodolfo Tolentino** declared that he was under the employ of accused since 2001. He designed and constructed his clinic known as Body and Face at the Farmer's Plaza in Cubao, Quezon City and at The Plaza in Greenbelt, Makati City. He claimed that it was impossible for accused to have conducted his business or practiced his

[31] *Exhibits* "II-1", "II-2", "JJ-1", "JJ-2", "KK-2" to "KK-5".
[32] *Exhibit* V2.
[33] *Exhibits* "M" to "M-5" and N-6 to N-7.
[34] Pages 10-20, TSN dated February 16, 2009, *Exhibits* "2" to "2-b".

profession in the said venues in 2001 since he commenced the construction of the two establishments sometime in March and April 2004, respectively, and finished in May 2004. In 2002 or 2003, he constructed about four other establishments for accused, the last of which was a clinic in Glorietta, Makati.[35]

Accused Dr. **Joel C. Mendez** denied that his business establishment known as the Weigh Less Center was already in operation in 2001, hence, there was yet no need to register it with the BIR.

He testified that he passed the medical board in 1988 and once the Chairman of the Philippine Medical Association doing free medical missions in Mt. Pinatubo under the Governor of Pampanga. He is also an artist.

He went to the United States in 2001 to enrol in a weighless management program. In 2003, he started his clinics in Pampanga, Dagupan, East Avenue, V. Luna, Roces, Greenbelt, and Farmer's Plaza. All his branches were registered with the BIR as evidenced by the Certificates of Registration[36] issued in his favor.[37] His Roces Avenue Branch was registered on March 4, 2003,[38] V. Luna Branch on March 30, 2004,[39] Farmers Branch on October 24, 2003,[40] and the Greenbelt Branch on April 30, 2004.[41] His branches in SM San Fernando[42] and Dagupan were registered with the BIR on January 17, 2003 and May 16, 2008, respectively. In 2003, he applied for the registration of his businesses with the Department of Trade and Industry (DTI).

He added that in 2001, he executed a Contract of Lease with Ma. Lita Gregorio, the owner of the property in Roces Avenue, for his clinic. Although lease agreement took effect in 2001, his clinic actually opened in 2003 as the place had to be renovated. The difficulties he encountered in the

[35] TSN, dated March 25, 2009.
[36] *Rollo,* Exhibits "4" to "9".
[37] TSN, dated May 18, 2009.
[38] *Exhibit* "4".
[39] *Exhibit* "5".
[40] *Exhibit* "6".
[41] *Exhibit* "7".
[42] *Exhibit* "8".

Quezon City Engineering Office also contributed to the delay in his operation. The said office even filed a case against him for not securing a building permit for the major renovation.

Accused claimed that when the advertisements in the newspapers were printed, his businesses were not yet in operation and the advertisements were only for promotions or for marketing purposes. In other words, registration with the BIR in 2001 was not necessary since income was yet to flow. Corollarily, the phrase "Since 1996" in his company's logo only means that his specialization in the United States under his brother's supervision started in 1996.[43] His investments in Sabili Mendez Medical Services, Primehealth Card Services, Orocab Company, Oro Glass and Aluminum Supply and the New Millenium came from loans, gifts, and inheritance.[44]

The Issue

WHETHER ACCUSED JOEL C. MENDEZ IS CRIMINALLY LIABLE FOR VIOLATION OF SECTION 255 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

The Court's Finding and Ruling

Accused Joel C. Mendez is charged under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended,[45] which covers four (4) different situations, each

[43] Pages 14-17, TSN, dated June 29, 2009.
[44] Page 13, TSN, dated June 29, 2009.
[45] 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 on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

of which constitutes a failure to perform, in a timely manner, an obligation, to wit:

(1) To pay an estimated tax or taxes;

(2) To make (file) a return;

(3) To keep records; and

(4) To supply information.

In the present case, accused is indicted for failure to make or file a return for income earned for the taxable year 2001 to the damage and prejudice of the Government in the estimated amount of Php1,089,439.08, exclusive of penalties, surcharges and interest.

To sustain conviction, the following elements of the offense charged must be established by sufficient and credible proof, thus:

(1) That accused was a person required to make or file a return;

(2) That he failed to make or file such return at the time required by law;

(3) That the failure to make or file the return was willful.

The evidence show that accused had the legal obligation to make or file an ITR.

Under Sections 51(A)(1)(a) and 74(A) of the NIRC of 1997, as amended,[46] accused is expressly mandated to make/file an ITR for the taxable year 2001.

[46] SEC. 51. Individual Return. —

(A) Requirements. —

Accused claims that he was not legally obligated to file an ITR for taxable year 2001 as he had no income earned during that said taxable year. The pieces of evidence however reveal that he had been practicing his profession as a doctor offering medical services in his various clinics operating under the name and style of "Weigh Less Center/Mendez Medical Group" as early as 1996. Most of his medical clinics and other businesses were established in 1996, namely: 1) Weigh Less Center, Co., on September 23, 1996[47]; 2) Sabili Mendez Medical Services Co., on August 11, 1993[48]; 3) Mendez Medical Services Co. (Formerly: Sabili Mendez Medical Services Co.), on August 8, 1996[49]; 4) Dr. Mendez Industrial and Lying-in Clinic Ltd. Co., on February 6, 1996[50]; 5) Primehealth Card Services, Inc., on February 1, 1994[51]; 6) Oro Cup, Co., on May 2, 1996[52]; 7) Oro Glass and Aluminum Supply Ltd. Co., on January 26, 1996[53]; 8) The

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(1) Except as provided in paragraph (2) of this Subsection, **the following individuals are required to file an income tax return**:

(a) **Every Filipino citizen residing in the Philippines**;

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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**. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

[47] *Rollo*, p. 423.
[48] *Rollo*, p. 428.
[49] *Rollo*, p. 433.
[50] *Rollo*, p. 438.
[51] *Rollo*, p. 443.
[52] *Rollo*, p. 455.
[53] *Rollo*, p. 460.

New Millenium Network Ltd. Co., on February 7, 1996[54]; and 9) The Big and Small Art Co., on August 8, 2001[55].

Accused even placed several advertisements in the newspaper Philippine Star either in the name of Weigh Less Center/Body or Face by Mendez/Mendez Medical Group in 2001 obviously to market his business and attract more clients.[56] An article entitled "Weighing In For The Holidays" published in the December 19, 2000 issue of the Philippine Star[57] advertised the services then offered by Weigh Less Center in (a) Health Way Medical Center, Basement Level, Annex Building, SM City and (b) Health Way Medical Center, Second Floor, Alabang Town Center. Print-ads were also placed in the Philippine Daily Inquirer in 2001 as shown in the Certification issued by Jose H. Villareal, VP-Finance of the Philippine Daily Inquirer, Inc.[58]

The massive and huge advertising campaign covering the print and broadcast media in 2000 and 2001 to promote the branches of Weigh Less Center negates accused' contention that he was not yet in operation in 2001.[59]

Significantly, in his Rejoinder-Affidavit, [60] accused admitted having rendered services to some celebrity-clients but claimed that they were mostly *gratis* or exchange deals for free commercial plugging of his businesses in their respective radio or TV programs.

The NIRC of 1997 however defines gross income as **all income from whatever source derived like compensation for services in whatever form paid**, including but not limited to fees, salaries, wages, commissions, and other similar items.

To be sure, the services rendered by accused to his celebrity-clients were not for free but actually paid on exchange-deal basis usually pegged on the station's

[54] *Rollo*, p. 465.
[55] *Rollo*, p. 470.
[56] *Exhibit* "O" to "O-4" of Plaintiff.
[57] *Exhibit* "Q" of the Plaintiff.
[58] *Exhibit* "T" to "T-7" of Plaintiff.
[59] Page 25, TSN dated June 29, 2009.
[60] *Rollo*, pp. 1087-1096, *Exhibit* "10".

commercial rate per exposure. The commercial minutes were charged to or absorbed by the celebrity-clients, who advertised the name of accused and/or his businesses either via live-spill or the closing billboard credits (cbc) at the end of their respective radio or TV programs. These commercial minutes allotted to celebrities are actually part of their compensation package. Evidently, the allegation of accused that no income was generated from the services rendered to his celebrity-clients finds no basis under Our Tax Code.

Even assuming *in gratia argumenti* that no income was generated from his business in 2001, still accused had, under Section 51(A)(2)(a) of the 1997 NIRC,[61] the obligation to file an ITR. The said provision explicitly requires every person engaged in trade or business or is in the exercise of his profession, like accused, to file an ITR and declare income obtained from whatever source, irrespective of whether the income flowed during the taxable period.

Further, Section 236(A)(2)[62] of the NIRC of 1997, as amended, requires registration "on or before the commencement of business". It is the commencement of business or the engagement in the practice of profession that subjects the taxpayer to the requirement of registration and subsequent filing of an ITR.

Contrary to accused' claim, generation of income is not a condition to the filing of an ITR. The obligation to file an ITR is not dependent on the acquisition of income during the

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[61] SEC. 51. Individual Return. —

(A) Requirements. —

(2) The following individuals shall not be required to file an income tax return:

(a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: **Provided, That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income**; (*Emphasis and underscoring supplied*)

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[62] "Sec. 236. Registration Requirements. —
(A) Requirements. — Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
(2) On or before the commencement of business.

relevant taxable period. In fact, a taxpayer who has registered but has not operated during the taxable year, or worse, incur losses in the conduct of business is still mandated to file an ITR. Once the business is registered, a corresponding duty to file an ITR exists.

Undoubtedly, accused, who practiced his profession in 2001 and earned income therefrom had the obligation to register it, file an ITR and pay the corresponding tax thereon but failed, in violation of the Tax Code.

Accused Failed To Make/File a Return Within The Required Period.

Pursuant to Sections 51(A)(1)(a) and 74 of the 1997 NIRC, as amended, accused, as a person engaged in the practice of his profession in 2001 and had conducted business, had the obligation to file an ITR for the taxable year 2001. The venue and the period within which to comply with this obligation are expressly provided in Section 51, Subsections (B) and (C) (1).[63]

Note that accused unequivocally admitted that he is a duly registered taxpayer with Tax Identification No. (TIN) 120-644-683-000 and with office at No. 31, Roces Avenue, Quezon City. Being a registered taxpayer, accused had the obligation to file an ITR with the RDO of the place where his

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[63] SEC. 51. Individual Return. —

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

(C) When to File. —

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

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business establishment was located during the relevant taxable period. But as disclosed in the affidavits executed or certifications issued by BIR Officers Clavelina S. Nacar of RDO No. 39, [64] Romeo E. Naranjo of RDO No. 40, [65] Simplicio A. Madulara of RDO No. 49, [66] and Florante R. Aninag of RDO No. 21[67], accused did not file an ITR for the taxable year 2001 with the RDO concerned.

Further, under Section 51(C)(1), accused had until the 15th day of April 2002 to file his ITR for taxable year 2001. But accused failed. Per the information gathered from the BIR Integrated Tax System, there exists no record of accused' filing of an ITR for that year. The same source revealed that accused registered only on May 6, 2002.

Accused' non-filing of the required ITR and non-payment of the corresponding tax was willful.

A willful act is described in the Eighth Edition of Black's Law Dictionary as a voluntary and intentional act but not necessarily malicious, viz,:

> The word "wilful" or "wilfully" when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent. Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3D D. 1982).
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> "Almost all of the cases under [Bankruptcy Code 53 (a)(6)] deal with the definition of the two words 'willful' and

[64] *Rollo*, p. 74.
[65] *Rollo*, p. 85.
[66] *Rollo*, p. 84.
[67] *Rollo*, p. 73.

> 'malicious' initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them. David B. Epstin, et al. *Bankruptcy* 730, at 531 (1993).

On the other hand, willfulness has been defined by the United States Supreme Court in the cases of *Cheek vs. United States* [498 U.S. 192 (1991)], *United States vs. Pomponio* [429 U.S. 10 (1976)], and *United States vs. Bishop* [412 U.S. 346, 360 (1973)] as a voluntary, intentional violation of a known legal duty. In the Pomponio case, the United States Supreme Court elucidated on the term further in this wise:

> "The Court, in fact, has recognized that the word 'willfully' in these statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as bad faith or evil intent."

Thus, to have conviction for willful failure to file an ITR, the prosecution ought to show that the act or omission was done by accused knowingly, intentionally and with the specific intent to disregard the law. In other words, the prosecution must establish that accused was cognizant of his obligation to file an ITR for the subject period and pay the corresponding tax therein, yet voluntarily, knowingly and intentionally failed to do so.

Undeniably, accused is highly literate with business acumen. His own declarations pertaining to his various businesses manifest an unobscured awareness that he was in business with the obligation to register his businesses and pay the corresponding taxes for income earned therefrom. In fact, he did it, only belatedly.

Accused cannot also feign ignorance of his obligation under the NIRC, as amended. He was notified on the matter by the BIR as confirmed by his own employee Cherry A.

Perez. He was given not one but several opportunities to submit his accounting records and other business documents to refute if not negate the BIR finding that he failed to file the required 2001 ITR and pay the corresponding tax for income earned for taxable year 2001. But despite notice and opportunity granted, accused failed to take any action to on the matter, an indication of his intent to defraud the Government. The ruling of the Supreme Court in *Republic vs. Gonzalez*[68] on the matter is instructive, thus:

> "Since fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. The failure of the appellant to declare for taxation purposes his true and actual income derived from his furniture business for two consecutive years is an indication of his fraudulent intent to cheat the Government of its taxes."

In any event, malice, bad motive or intent to defraud the Government need not be shown in this particular case.[69] The NIRC of 1997, under which accused is charged, is a special law and any violation thereof is considered a *malum prohibitum,* hence, good faith or lack of criminal intent is not accepted as a defense. What makes the charge a felony is not the criminal intent of accused but the special law enacting it.[70] In offenses considered *mala prohibita* or when the doing of an act is prohibited by a special law, the commission of the prohibited act itself is a crime.[71] In *United States v. Go Chico,*[72] the Supreme Court in discussing offenses considered as *mala prohibita,* had this to say:

> ...it is not necessary that the appellant should have acted with criminal intent. In many crimes, made such by statutory enactment, the intention of the person who commits the crime is entirely immaterial. This is necessarily so. If it were not, the statute as a deterrent influence would be

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[68] L-17962, April 30, 1965.
[69] *People vs. Gloria V. Kintanar*, CTA Crim Case Nos. O-033 & O-034, August 26, 2009.
[70] *Loney v. People*, 482 SCRA 194.
[71] *Tigoy v. Court of Appeals*, 492 SCRA 539.
[72] 14 Phil. 128 (1909).

> substantially worthless. It would be impossible of execution. In many cases, the act complained of is itself that which produces the pernicious effect the statute seeks to avoid. In those cases, the pernicious effect is produced with precisely the same force and result whether the intention of the person performing the act is good or bad.

In fine, the prosecution was able to establish the guilt of accused beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended.

Under Section 225 of the NIRC, as amended, the imposable penalty for the crime charged, in addition to other penalties provided by law, is payment of fine of not less than Ten thousand pesos (P10,000.00), **and** imprisonment of not less than one (1) year but not more than ten (10) years.

Further, under the Indeterminate Sentence Law known as Act No. 4103, as amended, if the offense is punished by a special law(s) that define and penalize crimes not included in the Revised Penal Code, the Court is mandated to sentence accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same.[73]

As regards accused' civil liability for unpaid taxes and penalties, the same is deemed simultaneously instituted and jointly determine with the instant criminal case pursuant to Republic Act No. (RA) 1125, as amended by Section 7 (b) (1) of RA No. 9282 "and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

However, the evidence presented against accused focused only on accused' non-filing of income tax return for income earned for the taxable year 2001.

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[73] *Rene M. Francisco v. People,* G.R. Nos. 177430 and 178935, July 14, 2009).

Upon examination of the computation of alleged damaged caused to the government by accused' non-filing of ITR for taxable year 2001, it appears that the BIR used the Expenditure Method of proof to determine the income tax liability of accused which is essentially the same as and a variation of the Net Worth Method of proof. This method is based on the theory that if the taxpayer's expenditure during the given year exceeds his reported income or when there was no income reported at all, and the source of such expenditure is unexplained, it may be inferred that such expenditures represent unreported income.[74] It is often utilized when: (1) the taxpayer's accounting records are inadequate and do not clearly reflects his income; (2) the taxpayer maintains no books and records; and (3) the taxpayer's accounting records are available, but he refuses to produce them.

With Expenditure Method, the prosecution need not prove the specific source, but only the likely source of taxable income that could be established by business operations and unreported transactions. Likewise, the prosecution need not show that the likely source was capable of generating the entire amount of unreported income.[75]

While it is true that the foregoing approximation of the alleged income earned by accused for taxable year 2001 was relied upon by the Court in finding the accused guilty beyond reasonable doubt of the crime charged in the information, the said computation prepared by the investigating RO may not be used as basis to impose the civil liabilities prayed for by the prosecution.

In the case of *Ungab vs. Cusi, Jr.*,[76] the Supreme Court said:

> "While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the

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[74] Annex "A" of Revenue Audit Memorandum Order No. 1-00 – Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.
[75] *United States v. Costanzo*, 581 F.2d 28, 33.
[76] G.R. Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

> precise computation and assessment of the tax before there can be a criminal prosecution under the Code."

While an assessment of the tax before there can be a criminal prosecution is not necessary, a civil action for collection of the tax requires that the assessment procedures be complied with. In the instant case, the prosecution did not present any assessment by the Commissioner. What was presented was only the computation of alleged deficiency tax prepared by RO Alexander D. Martinez, thus, there can be no basis for the imposition of civil liability against accused.

With respect to imposable penalties, the pertinent portion of Section 255 of the NIRC of 1997, as amended, is instructive. It reads as follows:

> "SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, **in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.**" (*Emphasis supplied*)

WHEREFORE, the Court finds accused Joel C. Mendez, **GUILTY** beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and he is hereby **SENTENCED** to suffer an indeterminate prison term of ONE (1) YEAR, as minimum, to THREE (3) YEARS, as maximum. In addition, accused is **ORDERED TO PAY** a fine in the amount of TEN THOUSAND PESOS (Php10,000.00), with subsidiary imprisonment in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice