REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **ARNEL CORTEZ MANALOTO,** 64B Sto. Entierro Street, Sto. Cristo, Angeles City, Pampanga Accused.	**CTA CRIM. CASE NO. O-454** NPS Docket No. XVI-INV-12K-00520 For: Violation of Section 254 of the National Internal Revenue Code of 1997, as amended (Attempt to Evade or Defeat Tax)

x---x

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **ARNEL CORTEZ MANALOTO,** 64B Sto. Entierro Street, Sto. Cristo, Angeles City, Pampanga Accused.	**CTA CRIM. CASE NO. O-455** NPS Docket No. XVI-INV-12K-00520 For: Violation of Section 254 of the National Internal Revenue Code of 1997, as amended (Attempt to Evade or Defeat Tax)

x---x

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **ARNEL CORTEZ MANALOTO,** 64B Sto. Entierro Street, Sto. Cristo, Angeles City, Pampanga Accused.	**CTA CRIM. CASE NO. O-456** NPS Docket No. XVI-INV-12K-00520 For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ARNEL CORTEZ MANALOTO,
64B Sto. Entierro Street,
Sto. Cristo, Angeles City, Pampanga
Accused.

CTA CRIM. CASE NO. O-457
NPS Docket No. XVI-INV-12K-00520
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 0 5 2018 9:26 am

x - x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Accused Arnel Cortez Manaloto, a law practitioner, is charged before this Court of the crimes of attempt to evade or defeat the payment of Value-Added Taxes (VAT) under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, for taxable year 2011,[1] attempt to evade or defeat tax under Section 254 of the NIRC, as amended, by substantial under-declaration of income tax for taxable year 2011,[2] failure to file VAT Return under Section 255 of the NIRC, as amended, for taxable year 2011,[3] and failure to supply correct and accurate information in his Income Tax Return (ITR) under Section 255 of the NIRC, as amended, for taxable year 2011[4].

---

[1] CTA Crim. Case No. O-454.
[2] CTA Crim. Case No. O-455.
[3] CTA Crim. Case No. O-456.
[4] CTA Crim. Case No. O-457.

STATEMENT OF FACTS

On March 26, 2015, the prosecution filed before this Court four (4) separate Informations against the accused. The accusatory portions of which provide:

CRIMINAL CASE NO. O-454

INFORMATION

xxx xxx xxx

"That in 2011 until April 25, 2012, in Angeles City, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, who is a law practitioner and a registered tax payer of Revenue District No. 21A, North Pampanga, being required by law to pay Value Added Taxes (VAT) did, then and there, willfully, unlawfully, and feloniously attempt to evade or defeat tax, as said accused did not pay his Value-Added Taxes (VAT) for entire taxable year of 2011 thereby resulting in basic deficiency Value-Added Tax in the total amount of **Four Million Five Hundred Fifty Six Thousand Seventy One Pesos and 95/100** (P4,556,071.95), more or less, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

CRIMINAL CASE NO. O-455

INFORMATION

xxx xxx xxx

"That on or about the 15th of April 2012, in Angeles City, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, a registered tax payer of

Revenue District No. 21A, North Pampanga, under TIN 240-090-529-000, required by law, rules and regulations, to pay correct taxes did, then and there, willfully, unlawfully, and feloniously attempt to evade or defeat tax, as said accused substantially underdeclared his income for taxable years*[sic]* 2011 in his income Tax Return thereby resulting in basic income tax deficiency of **Twelve Million One Hundred Fourteen Thousand Five Hundred Twenty Five Pesos and 20/100** (P12,114,525.20), more or less, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

<u>CRIMINAL CASE NO. O-456</u>

INFORMATION

xxx xxx xxx

"That in 2011 until April 25, 2012, in Angeles City, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a law practitioner and a registered tax payer of Revenue District No. 21A, North Pampanga, being required by law to file Value-Added Tax (VAT) Return, did, then and there, willfully, unlawfully, and feloniously fail to file his Value-Added Tax Return for taxable year 2011, thereby resulting in Value-Added Tax deficiency/liability in the amount of **Four Million Five Hundred Fifty Six Thousand Seventy One Pesos and 95/100 (P4,556,071.95)**, more or less, exclusive of surcharge and interest, to the damage and prejudice of the government."

CONTRARY TO LAW. *gc*

CRIMINAL CASE NO. O-457

INFORMATION

xxx xxx xxx

"That on or about the 15th day of April 2012, in Angeles City, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a registered tax payer, required to pay internal revenue taxes, did, then and there, willfully, unlawfully, and feloniously, fail to supply correct and accurate information in his 2011 Income Tax Return, by making it appear under oath that his income for taxable year 2011 was in the amount of P1,495,200.00 only, when in truth and in fact, said accused's income during the same taxable period was in the amount of **P37,967,266.26** but failed to declare them in his Income Tax Return, to the damage and prejudice of the government in the amount of **Twelve Million One Hundred Fourteen Thousand Five Hundred Twenty Five Pesos and 20/100 (P12,114,525.20),** more or less, as basic income tax deficiency, exclusive of surcharges and interest."

CONTRARY TO LAW.

The Court found the existence of probable cause for the issuance of warrant of arrest against the accused for CTA Crim. Case Nos. O-454[5] and O-457[6] on May 12, 2015, for CTA Crim. Case No. O-455[7] on May 25, 2015, and for CTA Crim. Case No. O-456[8] on June 22, 2015.

On June 4, 2015,[9] the Court received the transmittal of the surety bond posted for the provisional liberty of the accused for the subject criminal cases, which was duly approved in an Order dated May 28, 2015 by Hon. Omar T. Viola, Executive Judge of the Regional Trial Court, Branch 57 of Angeles City, Pampanga.

On August 10, 2015,[10] the Court consolidated CTA Crim. Case Nos. O-455, O-456, and O-457 with CTA Crim. Case No. O-454, the

[5] CTA Crim. Case No. O-454, Docket (Vol. I), pp. 252-257.
[6] CTA Crim. Case No. O-457, Docket, pp. 250-255.
[7] CTA Crim. Case No.O-455, Docket, pp. 248-252.
[8] CTA Crim. Case No. O-456, Docket, pp. 211-215; The issuance of warrant of arrest against the accused was deemed MOOT considering that the accused already posted a surety bond.
[9] CTA Crim. Case No. O-454, Docket (Vol. I), pp. 268-322, with supporting documents.
[10] CTA Crim. Case No. O-454, Docket (Vol. I), pp.363-354.

case bearing the lower docket number, also pending before this Division.

Upon arraignment,[11] accused, assisted by his counsel, pleaded "Not Guilty" to the charges in the respective Information contained in these consolidated cases.

The Preliminary Conference was held on January 25, 2016[12] and continued on February 15, 2016.[13]

On March 31, 2016, both parties manifested that they are adopting the Minutes of the Preliminary Conference, thus, pre-trial conference was deemed terminated.[14]

On May 3, 2016, the Court issued the Pre-Trial Order.[15] The parties stipulated the following facts:[16] 1.That the accused Arnel Cortez Manaloto is the same person being charged in the sets of Information. 2. That this Court has jurisdiction over the person of the accused Arnel Cortez Manaloto.

During trial, the prosecution presented the following witnesses: 1. Ms. Mary Grace Alonzo,[17] 2. Ms. Gertrudes M. Eito,[18] 3. Mr. Gary V. Atanacio,[19] 4. Ms. Evangeline S. Catotal,[20] 5. Ms. Rosalina F. Legaspi,[21] 6. Ms. Imelda D. Cebuano,[22] 7. Ms. Liza Jane G. Taojo,[23] and 8. Mr. Benjamin B. Virtucio, Jr.[24]

Witness Ms. Mary Grace P. Alonzo testified by way of Judicial Affidavit.[25] Ms. Alonzo is a Revenue Officer of the BIR and presently assigned at the National Investigation Division (NID). The Judicial Affidavit of Ms. Alonzo was offered to prove the following: (a) Witness

---

[11] Minutes of the Hearing dated November 26, 2015, CTA Crim. Case No. O-454, Docket (Vol. I), p. 381.
[12] CTA Crim. Case No. O-454, Docket (Vol. I), pp. 389-393.
[13] CTA Crim. Case No. O-454, Docket (Vol. I), pp. 413-423.
[14] CTA Crim. Case No. O-454, Docket (Vol. II), p. 433.
[15] CTA Crim. Case No. O-454, Docket (Vol. II), pp. 436-437.
[16] CTA Crim. Case No. O-454, Docket (Vol. II), p. 436.
[17] Transcript of Stenographic Notes (TSN), May 16, 2016 Hearing.
[18] TSN, June 27, 2016 Hearing.
[19] TSN, July 18, 2016 Hearing.
[20] TSN, August 15, 2016 Hearing.
[21] TSN, October 10, 2016 Hearing and TSN, February 6, 2017 Hearing.
[22] TSN, November 14, 2016 Hearing.
[23] TSN, November 14, 2016 Hearing.
[24] TSN, January 23, 2017 Hearing.
[25] Exhibit "P-66".

is one of the revenue officers of the Bureau of Internal Revenue who was assigned to investigate Accused Arnel Cortez Manaloto by virtue of a NID Memo Assignment; (b) From the BIR's investigation of Accused Manaloto, it was verified that Accused Manaloto acquired from Datu Andal Ampatuan, Jr. in 2011 a total of eight (8) real estate properties in Davao City; (c) Accused Manaloto under-declared his income for taxable year 2011; (d) Accused Manaloto has total deficiency taxes for taxable year 2011 amounting to Twenty Seven Million Five Hundred Sixty Three Thousand Five Hundred Ninety Five and 84/100 Pesos (P27,563,595.84), and (e) Other matters related to the foregoing, which includes the identification of the witness of documents in support of the foregoing.[26]

Witness Ms. Alonzo testified on the investigation she and her group conducted regarding the tax liabilities of accused Manaloto for taxable years 2005 to 2011.[27] On November 16, 2012, Chief, NID Atty. Sixto C. Dy, Jr. issued a Memorandum directing her group to conduct a preliminary investigation on Mr. Manaloto's tax liabilities.[28] The group of examiners referred to composed of witness Alonzo as one of the members together with Gertrudes M. Eito and Gary Atanacio and headed by Group Supervisor Evangeline S. Catotal.[29] The group started to conduct initial investigation by accessing the centralized database of BIR- which is called the Integrated Tax System (ITS).[30] Upon accessing the said database, her group gathered some personal information about the accused, as follows: That Mr. Manaloto is a lawyer by profession; that he is registered as a Professional in the Practice of law with the trade name THE OFFICE, ATTY. ARNEL C. MANALOTO; that he is a registered taxpayer of Revenue District Office No. 21-A, North Pampanga with TIN 240-090-529-000.[31] As part of the investigation, her group was instructed by Deputy Commissioner Estela V. Sales of Legal Group to draft a Memorandum dated November 23, 2012 directing Revenue District Office No. 21-A, North, Pampanga to furnish her with certified true copies of all annual income tax return/s and value added tax returns that were filed by Accused Manaloto with said district.[32] Her group were furnished copies of a Certificate Authorizing Registration together with the supporting documents such as the Deed of Absolute Sale made between Datu Andal Ampatuan, Jr. and Accused Manaloto and a Special Power of Attorney.[33] Her group

---

[26] CTA Crim. Case No. O-454, Docket (Vol. II), p.451.
[27] A5, Exhibit "P-66".
[28] A7, Exhibit "P-66".
[29] A9, Exhibit "P-66".
[30] A14, Exhibit "P-66".
[31] A15, A16, and A17, Exhibit "P-66".
[32] A18, Exhibit "P-66".
[33] A28, Exhibit "P-66".

proceeded to evaluate the data gathered and came out with the computation of the tax liabilities of the Accused Manaloto.[34]Ms. Alonzo stated that her group was able to compute the total income received by Accused for taxable year 2011, determine the corresponding deficiency income of Mr. Manaloto and print computation sheets.[35] Based on her group's computation, the total income of accused subject to tax for taxable year 2011 was P37,967,266.26[36] and accused's total deficiency taxes for taxable year 2011 was P27,563,595.84.[37] Subsequently, her group received a Letter of Authority (LOA) dated November 26, 2012 issued by the Commissioner of Internal Revenue (CIR),[38] authorizing the members of the group to examine the books of accounts of accused for period from January 1, 2005 to December 31, 2011. She also stated that her group sent a copy of LOA to the accused and attached a checklist of requirements addressed to the accused Manaloto requesting for the production of his accounting records to be examined by her group pursuant to the LOA,[39] but there was no reply from the accused.[40] The CIR issued a letter referral dated November 29, 2012 to the Secretary of Justice for the filing of the criminal action against the accused.[41]The group executed a Joint Complaint –Affidavit dated November 29, 2012 in connection with the investigation conducted.[42]

During the cross-examination of Ms. Alonzo,[43] it was established that the amount of the tax liabilities of the accused was computed before the issuance of the LOA;[44] that Ms. Alonzo was not the one who personally served the LOA, but she knew that the said LOA was received by the security guard of the premises;[45]that the LOA was issued three (3) days prior to the filing of the Joint Complaint-Affidavit with the Department of Justice;[46]and that expenditure method was used by her group in computing the tax liabilities of the accused for taxable year 2011. In that year, her group determined the total purchases and expenditure of the taxpayer which is not proportionate to his taxable income per his ITR.[47] The cash income for the year 2011

[34] A33, Exhibit "P-66".
[35] A34, Exhibit "P-66".
[36] A40, Exhibit "P-66".
[37] A41, Exhibit "P-66".
[38] A42, Exhibit "P-66".
[39] A43, Exhibit "P-66".
[40] A47, Exhibit "P-66".
[41] A48, Exhibit "P-66".
[42] A51 and A52, Exhibit "P-66".
[43] TSN, May 16, 2016 Hearing.
[44] TSN, May 16, 2016 Hearing, p. 13.
[45] TSN, May 16, 2016 Hearing, p. 14.
[46] TSN, May 16, 2016 Hearing, pp. 15-16.
[47] TSN, May 16, 2016 Hearing, p. 17.

was also determined in computing the tax liabilities of the accused.[48] When witness was asked if it is important to determine the beginning cash balance for the year 2011 in order to compute the amount of the tax liabilities of the accused, she answered, "NO."[49] The witness did not know if the BIR issued a *subpoena duces tecum* to the accused.[50] When witness Ms. Alonzo was asked based on the documents identified, "what among those documents will prove that the deferred income is actually cash?" She answered that, "I don't know. The income is just labelled as deferred."[51]

On re-direct examination, witness Ms. Alonzo explained that three (3) days after the issuance of the LOA, the case was filed with the DOJ because they followed the instruction of the CIR.[52] She also stated that the computation was computed by the group.[53] Her other-co-members are Gertrudes Eito, Gary Atanacio, and the group is headed by Group Supervisor Evangeline S. Catotal.[54]

Witness Ms. Gertrudes M. Eito testified by way of Judicial Affidavit to prove the following: (a) Witness is one of the revenue officers of the BIR who was assigned to investigate Accused Cortez Manaloto by virtue of a NID Memo Assignment; (b) From the BIR's investigation of Accused Manaloto, it was verified that Accused Manaloto is registered as a non-VAT taxpayer with Tax Identification Number 240-090-529, with residential addresses at 64-B Sto. Entierro St., Sto. Cristo, Angeles City; and at 20 Don Luis Panlilio St., Villa Dolores Subd., Sto. Domino, Angeles City; (c) Witness was tasked to serve the Letter of Authority issued against Accused Arnel Cortez Manaloto at his registered residential address at 20 Don Luis Panlilio St., Villa Dolores Subd., Sto. Domino, Angeles City, and (d) Other matters related to the foregoing, which includes the identification of the witness of documents in support of the foregoing.[55]

Witness Ms. Eito is currently an Intelligence Officer III assigned at the NID-BIR. She testified, among others, that on November 27, 2012, she went to 64-B Sto. Entierro St., Sto. Cristo, Angeles City, but despite her best efforts, she could not find the said address.[56] She

[48] TSN, May 16, 2016 Hearing, p. 16.
[49] TSN, May 16, 2016 Hearing, p. 16.
[50] TSN, May 16, 2016 Hearing, pp. 17-18.
[51] TSN, May 16, 2016 Hearing, p. 20.
[52] TSN, May 16, 2016 Hearing, p. 22.
[53] TSN, May 16, 2016 Hearing, p. 23.
[54] TSN, May 16, 2016 Hearing, p. 23.
[55] CTA Crim. Case No. O-454, Docket (Vol. II), p.451.
[56] A16, Exhibit 'P-68".

decided to go to the second address on record of Mr. Manaloto at 20 Don Luis Panlilio St., Villa Dolores Subd., Sto. Domino, Angeles City to serve the LOA.[57] She knocked on the gate and the security guard came out.[58] She asked if the house was the house of Arnel Manaloto[59] and the guard replied that it was indeed the house of Mr. Manaloto but he was not at home that time.[60] The guard was the one who received the LOA[61] on November 27, 2012.[62]

On cross-examination, Ms. Eito stated that she appeared before this Court just to identify the LOA as well as how the LOA was served.[63]

Witness Mr. Gary V. Atanacio testified by way of Judicial Affidavit.[64] He is presently employed as Special Investigator of the NID-BIR. He said that he is one of the members of the group assigned to investigate regarding the tax liabilities of Mr. Arnel Manaloto for taxable years 2005 to 2011.[65] He testified that he conducted a background investigation by looking at the records of Mr. Manaloto in the BIR Returns Processing System or RPS.[66] He learned of the income declared in the income tax returns of Mr. Manaloto for taxable years 2008, 2009, 2010, and 2011.[67] Accused's declared gross income were as follows: for taxable year 2008 - P43,000.00[68]; for taxable year 2009 - P112,594.18[69]; for taxable year 2010 – P234,188.00[70]; and for taxable year 2011 – P1,495,200.00[71].

On cross-examination, [72] Mr. Atanacio testified that prior to the filing of the complaint affidavit, they were not able to examine the book of accounts of the accused,[73] and that the complaint was based on the Report on preliminary investigation conducted by their team.[74] The LOA was issued on November 26, 2012 and the complaint was filed on

[57] A17, Exhibit 'P-68".
[58] A19, Exhibit 'P-68".
[59] A20, Exhibit "P-68".
[60] A21, Exhibit "P-68".
[61] A24, Exhibit "P-68".
[62] A26, Exhibit "P-68".
[63] TSN, June 27, 2016 Hearing, p. 9.
[64] Exhibit "P-70".
[65] A5 and A14, Exhibit "P-70".
[66] A15, Exhibit "P-70".
[67] A18, Exhibit "P-70".
[68] A19, Exhibit "P-70".
[69] A20, Exhibit "P-70".
[70] A21, Exhibit "P-70".
[71] A22, Exhibit "P-70".
[72] Hearing July 18, 2016.
[73] TSN, July 18, 2016 Hearing, p.8.
[74] TSN, July 18, 2016 Hearing, p.9.

November 29, 2012.[75] He stated that they can even file a complaint even based on Preliminary Investigation and even without examination of the book of accounts of the taxpayer.[76]

On re-direct examination, Mr. Atanacio said that as long as there is a fraud case based on the cash liability of the taxpayer, they are allowed to file a complaint even before an actual investigation.[77] He also said that the basis of the complaint affidavit is the under declaration of his income by at least thirty percent (30%). According to Mr. Atanacio, it was determined through the records of the taxpayer based on the BIR Return Processing System or the RPS. They compared it for that year, for the expenses and the purchases he made. In effect, the complaint was based on Third Party information and also with the records compared with the BIR.[78]

On re-cross examination, Mr. Atanacio admitted that the BIR was able to determine the civil liability or the deficiency tax liability of the accused prior to the issuance of the LOA.[79]

Witness Evangeline S. Catotal testified by way of Judicial Affidavit.[80] She was the supervisor of the group who conducted the preliminary investigation on accused's tax liabilities. Her group conducted the investigation by accessing the centralized database of BIR- which is called the Integrated Tax System (ITS); looked into past tax-related filings of Mr. Manaloto; and sent access letters to various agencies of government.[81] She said that her group received documents from RDO Rosalina F. Legaspi of RDO 21-A of North Pampanga, from Atty. Glen A. Geraldino, Regional Director of Revenue Region No. 19, Davao City, and from the Public Attorney's Office (PAO). Ms. Catotal stated that there was an under-declaration of more than 30% of the accused's income for the year 2011. She said that "The income which he declared in his finances for the year 2011, even if we consider prior years from 2005 to 2010, do not explain his ability to purchase his current assets, which includes eight (8) parcels of land worth Twenty Million Pesos (P20,000,000.00) purchased from Datu Andal Ampatuan, Jr. in the year 2011."[82]

---

[75] TSN, July 18, 2016 Hearing, p. 13.
[76] TSN, July 18, 2016 Hearing, p. 13.
[77] TSN, July 18, 2016 Hearing, p. 14.
[78] TSN, July 18, 2016 Hearing, p. 14.
[79] TSN, July 18, 2016 Hearing, p. 15.
[80] Exhibit "P-72".
[81] A11, Exhibit "P-72".
[82] A36, Exhibit "P-72".

On cross-examination, Ms. Catotal admitted that in computing the supposed tax liabilities of the accused in 2011, her group used the expenditure method. The cash expenditures were compared with the cash receipts.[83] She also stated that the coverage of the investigation based on the LOA is 2005 to 2011, however, they are assessing only 2011 based on the acquired assets by the accused.[84]

Witness Ms. Rosalina F. Legaspi testified by way of Judicial Affidavit[85] that in November 2012, she was assigned as OIC-Revenue District Officer of Revenue District Office No. 21-A, North Pampanga; and that she issued a certification on November 26, 2012 along with certified machine copies of the ITR and Financial Statements for taxable year 2011 filed by the accused.

On cross-examination,[86] Ms. Legaspi testified, among others, that the accused is a registered non-VAT taxpayer of Revenue District Office 21A,[87] thus, subject to percentage tax. She admitted that based on accused's ITR and financial statement, the accused is not liable to pay VAT.[88]

On July 26, 2017, the prosecution filed its Formal Offer of Evidence (FOE).[89] On August 14, 2017, accused filed his Comment on the Prosecution's Formal Offer of Documentary Evidence.[90] On September 8, 2017,[91] this Court acted on the prosecution's FOE and admitted the following exhibits, subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case:

EXHIBITS	DESCRIPTION
P-1	Bureau of Internal Revenue (BIR) Registration Individual Details
P-2	Certification issued by Revenue District Office No. 21A evidencing his registration with their office
P-3	BIR Form No. 1701: Annual Income Tax Return (ITR) for taxable year 2011 of Accused Manaloto

[83] TSN, August 15, 2016 Hearing, pp. 9-10.
[84] TSN, August 15, 2016 Hearing, p. 13.
[85] Exhibit "P-73".
[86] TSN, February 6, 2017.
[87] TSN, February 6, 2017, p. 8.
[88] TSN, February 6, 2017, p. 14.
[89] CTA Crim. Case No. O-454, Docket (Vol. II), pp. 790-837.
[90] CTA Crim. Case No. O-454, Docket (Vol. II), pp. 961-972.
[91] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 975-976.

P-4	Deed of Absolute Sale dated 17 January 2011
P-4-1	Special Power of Attorney dated 26 January 2011
P-5	Independent Auditor's Report as of December 31, 2011 consisting of 3 pages
P-5-1	Deferred revenue entry in the Balance Sheet as of December 31, 2011
P-6	Letter of Authority (LOA) 211-2012-00000319/SN eLA201100045540 dated 26 November 2012
P-7	Certification issued by RDO No. 21A evidencing his failure to file VAT returns
P-8	Detailed computations of Atty. Manaloto's unreported income using the expenditure method for taxable year 2011
P-9	Detailed computation of Atty. Manaloto's deficiency income tax for taxable year 2011
P-10	Joint Complaint-Affidavit by Revenue Officers Mary Grace P. Alonzo, Gertrudes M. Eito, Gary V. Atanacio and Evangeline S. Catotal dated 29 November 2012, with annexes consisting of twenty eight (28) pages
P-11	Referral Letter to the Secretary of Justice Hon. Leila De Lima by Hon. Kim Jacinto-Henares, Commissioner of Internal Revenue dated 29 November 2012, consisting of two (2) pages
P-12	Joint Reply-Affidavit by Revenue Officer[s] Mary Grace P. Alonzo, Gertrudes M. Eito, Gary V. Atanacio and Evangeline S. Catotal dated 7 February 2013, consisting of nine pages
P-13	Supplemental Joint Reply Affidavit by Revenue Officer[s] Mary Grace P. Alonzo, Gertrudes M. Eito, Gary V. Atanacio and Evangeline S. Catotal dated 19 February 2013 with annexes consisting of 8 pages
P-15	BIR Returns Processing System (RPS) for the year 2008 consisting of two (2) pages
P-16	BIR Returns Processing System (RPS) for the year 2009 consisting of two (2) pages
P-17	BIR Returns Processing System (RPS) for the year 2010 consisting of two (2) pages
P-18	BIR Returns Processing System (RPS) for the year 2011 consisting of one (1) page
P-19	National Investigation Division (NID) Memo Assignment No. KJH/SCD 2012-11-16-0467 dated 16 November 2012

P-40	Access Letter to Chief Public Attorney, Public Attorney's Office (PAO) (ARL-PI No. 2396-2012) dated November 26, 2012
P-41	Certification issued by Epifanio C. Coles, Jr., Director II, Administrative Service, Public Attorney's Office dated November 27, 2012
P-42	Certification issued by Ms. Marilyn S. Boongaling, Chief Administrative Officer and concurrent Head, Personnel Section, Administrative Section, Public Attorney's Office, Department of Justice (DOJ-Agencies Bldg., Quezon City
P-46	Sworn Statement of Assets. Liabilities and Networth (SALN) of Arnel C. Manaloto filed in 2005
P-47	Sworn Statement of Assets. Liabilities and Networth (SALN) of Arnel C. Manaloto filed in 2007
P-48	Memorandum to Atty. Glen A. Geraldino, Regional Director, Revenue Region No. 19, Davao City dated November 23, 2012 consisting of two (2) pages
P-51	Certificate Authorizing Registration (CAR) 201000108453 dated November 26, 2012 consisting of 2 pages, certified on November 26, 2012
P-52	BIR Form 1706: Capital Gains Tax Return certified on November 26, 2012, certified on November 26, 2012
P-53	Revenue Official Receipt (ROR 201001557631), certified on November 26, 2012
P-54	BIR Form 2000-OT: Documentary Stamp Tax Return, certified on November 26, 2012
P-55	Revenue Official Receipt (ROR 201001557630) certified on November 26, 2012
P-64	Memorandum to OIC-RDO Rosalina F. Legaspi, Revenue District No. 21-A-North Pampanga dated November 23, 2012 consisting of two (2) pages
P-65	Bureau of Internal Revenue Identification Card of Revenue Officer Grace Alonzo (RO Alonzo)
P-66	Judicial Affidavit of Revenue Officer Grace Alonzo dated May 11, 2016
P-66-A	Signature of Revenue Officer Grace Alonzo in her Judicial Affidavit dated May 11, 2016
P-67	Bureau of Internal Revenue Identification Card of Revenue Officer Gertrudes Eito (RO Eito)
P-68	Judicial Affidavit of Revenue Officer Gertrudes Eito dated June 21, 2016

P-68-A	Signature of Revenue Officer Gertrudes Eito in her Judicial Affidavit dated June 21, 2016
P-69	Bureau of Internal Revenue Identification Card of Revenue Officer Gary V. Atanacio (RO Atanacio)
P-70	Judicial Affidavit of Revenue Officer Gary V. Atanacio dated July 13, 2016
P-70-A	Signature of Revenue Officer Gary V. Atanacio in his Judicial Affidavit dated July 13, 2016
P-71	Bureau of Internal Revenue Identification Card of Revenue Officer Evangeline Catotal (RO Catotal)
P-72	Judicial Affidavit of Revenue Officer Evangeline Catotal dated August 10, 2016
P-72-A	Signature of Revenue Officer Evangeline Catotal in her Judicial Affidavit dated August 10, 2016
P-73	Judicial Affidavit of Rosalinda Legaspi dated August 26, 2016
P-73-A	Signature of Rosalinda Legaspi in her Judicial Affidavit dated August 26, 2016

However, the Court denied the admission of the following exhibits: (1) Exhibits "P-4-2", "P-4-3", "P-4-4", "P-4-5", "P-4-6", "P-4-7", "P-4-8", "P-4-9", "P-4-10", "P-4-11", "P-4-12", "P-4-13", "P-4-14", "P-4-15", "P-4-16", "P-4-17", "P-4-18", "P-4-19", "P-4-20", "P-4-21", "P-4-22", "P-4-23", "P-4-24", "P-4-25", "P-4-26", for failure to have the exhibits identified and for failure to present the originals for comparison; (2) Exhibits "P-14", "P-21", "P-21-1", "P-43", "P-44", "P-45", "P-49", "P-56", "P-57", "P-58", and "P-59", for failure to have the exhibits identified; (3) Exhibit "P-20", for failure of the exhibit formally offered and identified to correspond with the document actually marked; and (4) Exhibit "P-50", for failure to present the original for comparison.[92]

On October 2, 2017, plaintiff filed a Motion for Extension of Time (to File Motion for Reconsideration).[93] Thereafter, on October 11, 2017, the plaintiff filed a Manifestation (Re: Plaintiff's Motion for Extension of Time to File Motion for Reconsideration) stating that it will no longer file a motion for reconsideration.[94] The Court noted the said Manifestation on October 25, 2017.[95]

---

[92] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 975-976.
[93] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1044-1046.
[94] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1084-1085.
[95] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1097-1098.

On October 2, 2017, the Court granted the Motion for Leave to File Demurrer to Evidence filed by the accused on September 29, 2017. The Court granted the prosecution a period of ten (10) days from receipt of the Demurrer to Evidence within which to file a Comment or Opposition thereto.[96]

On October 12, 2017, plaintiff filed its Comment and Opposition (To Accused's Demurrer to Evidence).[97] On October 30, 2017, accused filed a Reply to the Comment and Opposition.[98]

On January 11, 2018, the Court denied accused's Demurrer to Evidence.[99]

On January 26, 2018, accused filed Motion for Reconsideration and Motion for Deferment of Presentation of Evidence.[100] On January 31, 2018, the Court granted the parties a period of ten (10) days from today within which to file their respective Memoranda to accused's motion for reconsideration and motion for deferment of presentation of evidence.[101]

Accused's Memorandum[102] and Memorandum for the Plaintiff (Re: Denial of Accused's Demurrer to Evidence)[103] were filed by the parties on February 12, 2018.

On April 3, 2018, the Court denied accused's Motion for Reconsideration.[104]

On April 4, 2018, accused filed a Motion to Admit Attached Supplemental Memorandum.[105] On April 17, 2018, the Court ruled that the resolution of the said motion was deemed moot.[106] *Ju*

---

[96] CTA Crim. Case No. O-454, Docket (Vol. III), p. 1082.
[97] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1087-1094.
[98] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1121-1125.
[99] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1100-1120.
[100] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1127-1142.
[101] CTA Crim. Case No. O-454, Docket (Vol. III), p. 1145.
[102] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1146-1165.
[103] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1166-1173.
[104] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1178-1180.
[105] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1181-1183.
[106] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1192-1193.

For his defense, accused presented three (3) witnesses, namely: 1. Mr. Erwin Sicangco Carreon,[107] 2. Atty. Joselea Y. Floria-Balleta,[108] and 3. Atty. Rogelio T. Reyes.[109]

Witness Erwin Sicangco Carreon testified by way of Judicial Affidavit[110] which was identified on April 30, 2018 Hearing. Mr. Carreon is a licensed Certified Public Accountant and a PRC Accredited Auditor since 2005. He testified, among others, that BIR erred when it concluded that the Deferred Revenue Account in the total amount of P17,501,500.00 should have been considered as part of the total income of the accused because there was no receipt of income whether actually or constructively. He also stated that the "deferred revenue" account is actually a provision for the liability the accused under his existing obligation to perform legal services to his clients. [111] He said that under the Deferred Revenue concept, accused did not receive income whether actually or constructively.[112] He said that in the course of the audit, he did not come across any document which could support any constructive receipt of the items under "Deferred Revenue."[113] He also testified that taking into consideration the materiality of the service contracts, the continuing obligation of the accused to provide legal services to his clients, and the probability that his clients will eventually pay, thus he prepared the following adjusting entry on the books of the accused:

Dr. Other Assets xxx
    Cr. Deferred Revenue xxx.[114]

Witness Atty. Atty. Joselea Y. Floria-Balleta testified by way of Judicial Affidavit in connection with the Certifications she issued when she was the Clerk of Court VI in San Fernando, Pampanga.[115] She stated that she issued a Certification concerning the existence and notarization of promissory notes, copies of which were submitted by the Notary Public Atty. Rogelio T. Reyes to the Office of the Clerk of

---

[107] TSN, April 30, 2018 Hearing.
[108] TSN, July 2, 2018 Hearing.
[109] *Id.*
[110] Judicial Affidavit of Erwin Sicangco Carreon, CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1196-1207.
[111] Judicial Affidavit of Erwin Sicangco Carreon, 6A, CTA Crim. Case No. O-454, Docket (Vol. III), p.1198.
[112] Judicial Affidavit of Erwin Sicangco Carreon, 7A, CTA Crim. Case No. O-454, Docket (Vol. III), p.1198.
[113] Judicial Affidavit of Erwin Sicangco Carreon, 7A, CTA Crim. Case No. O-454, Docket (Vol. III), p.1198.
[114] Judicial Affidavit of Erwin Sicangco Carreon, 14A, CTA Crim. Case No. O-454, Docket (Vol. III), p.1202.
[115] Judicial Affidavit of Atty. Joselea Y. Flora-Balleta, CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1307-1311.

Court of San Fernando, Pampanga.[116] She also stated that her office issued a Negative Certification which says that a great portion of the records and documents filed and/or committed to the charge of their office were destroyed during monsoon rains on August 7 to 11, 2012 which inundated and flooded the City of San Fernando, Pampanga including the Hall of Justice Building housing the Office of the Clerk of Court and by reason of which, their records do not include notarial reports of Atty. Rogelio Reyes for the month of July 2010.[117]

Witness Atty. Rogelio T. Reyes testified by way of Judicial Affidavit.[118] He testified that he is a Notary Public in the City of San Fernando, Pampanga; and that the promissory notes of the accused exist and were notarized by him, and that he has submitted said promissory notes to the Clerk of Court of San Fernando, Pampanga.

On July 9, 2018, accused filed his Formal Offer of Evidence.[119]

On September 6, 2018, the Court granted Prosecution's Motion to Admit Comment (Re: Accused's Formal Offer of Evidence) and admitted the comment incorporated in its motion. The Court also noted and granted the accused's Manifestation (with Motion for Resolution on Accused's Formal Offer of Evidence). The Court admitted Exhibits "A-1", "A-1-1", "A-1-2", "A-2", "A-2-1", "A-2-2", "A-3", "A-3-1", "A-3-2", "A-4", "A-4-1", "A-4-2", "A-5", "A-5-1", "A-6", "A-6-1", "A-6-2", "A-7", "A-7-1", "A-7-2", "A-8", "A-8-1", "A-8-2", "A-10", "A-11", "A-12", "A-13", "A-16", "A-17", "A-18", "A-19", "A-20", "A-21", "A-22", "A-23", "A-24", "A-28", "A-28-1", "A-29", "A-29-1", "A-30", "A-30-1", "A-31", "A-31-1", "A-32", and "A-32-1".

Exhibit	**Documentary Evidence**
"A-1"	Promissory Note issued by Arnel Manaloto in favor of Takeshi Nioshioke dated December 27, 2010, in the amount of ₱ 2,000,000.00
"A-1-1"	Signature above the name Arnel Manaloto
"A-1-2"	Signature above the name Rogelio Reyes

[116] Judicial Affidavit of Atty. Joselea Y. Flora-Balleta, 3A, CTA Crim. Case No. O-454, Docket (Vol. III), p. 1308.
[117] Judicial Affidavit of Atty. Joselea Y. Flora-Balleta, 10A, CTA Crim. Case No. O-454, Docket (Vol. III), p. 1309.
[118] Judicial Affidavit of Atty. Rogelio T. Reyes, CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1317-1321.
[119] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1359-1368.

"A-2"	Promissory Note issued by Arnel Manaloto in favor of Jenilyn Dimalanta Dayrit dated December 22, 2010, in the amount of ₱2,500,000.00
"A-2-1"	Signature above the name Arnel Manaloto
"A-2-2"	Signature above the name Rogelio Reyes
"A-3"	Promissory Note issued by Arnel Manaloto in favor of Alfredo Buan dated December 20, 2010, in the amount of ₱2,500,000.00
"A-3-1"	Signature above the name Arnel Manaloto
"A-3-2"	Signature above the name Rogelio Reyes
"A-4"	Promissory Note issued by Arnel Manaloto in favor of Teresita Suva dated December 22, 2010, in the amount of ₱5,000,000.00
"A-4-1"	Signature above the name Arnel Manaloto
"A-4-2"	Signature above the name Rogelio Reyes
"A-5"	Promissory Note issued by Arnel Manaloto in favor of Takeshi Nioshioke dated December 3, 21010, in the amount of ₱1,500,000.00
"A-5-1"	Signature above the name Arnel Manaloto
	Signature above the name Rogelio Reyes
"A-6"	Promissory Note issued by Arnel Manaloto in favor of Gerardo Cesar Garcia dated December 9, 2010, in the amount of ₱2,500,000.00
"A-6-1"	Signature above the name Arnel Manaloto
"A-6-2"	Signature above the name Arnel Manaloto
"A-7"	Promissory Note issued by Arnel Manaloto in favor of Takeshi Nioshioke dated December 9, 2010 in the amount of ₱1,500,000.00
"A-7-1"	Signature above the name Arnel Manaloto
"A-7-2"	Signature above the name Arnel Manaloto
"A-8"	Promissory Note issued by Arnel Manaloto in favor of Marciana Dimalanta dated July 14, 2010 in the amount of ₱5,000,000.00
"A-8-1"	Signature above the name Arnel Manaloto
"A-8-2"	Signature above the name Arnel Manaloto
"A-10"	Retainer Agreement between Arnel Manaloto and Datu Andal Ampatuan, Jr. dated December 9, 2011.
"A-11"	Retainer Agreement between Arnel Manaloto and Datu Andal Ampatuan, Sr. dated December 12, 2011.
"A-12"	Retainer Agreement between Arnel Manaloto and Datu Sajid Ampatuan dated December 8, 2011.
"A-13"	Retainer Agreement between Arnel Manaloto and Datu Akmad Ampatuan dated December 8, 2011.

fr

"A-16"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱52,250.00 pertaining to the loan transaction with Marciana Dimalanta.
"A-17"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱50,167.50 pertaining to the loan transaction with Teresita Suva.
"A-18"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱14,750.25 pertaining to the loan transaction with Takeshi Nioshioke.
"A-19"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱25,083.75 pertaining to the loan transaction with Carmelo Lazatin.
"A-20"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱25,083.75 pertaining to the loan transaction with Jenilyn Dayrit.
"A-21"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱52,250.00 pertaining to the loan transaction with Gerardo Garcia.
"A-22"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱14,750.25 pertaining to transaction with Teresita Suva.
"A-23"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱19,667.00 pertaining to transaction with Takeshi Nioshioke.
"A-24"	Documentary Stamp Tax Form duly received in August 23, 2013 with payment amounting to ₱25,083.75 pertaining to transaction with Alfredo Buan.
"A-28" also marked as Exhibit P-10 for the prosecution	Complaint-Affidavit filed by the Bureau of Internal Revenue against Arnel Manaloto and Erwin Carreon
"A-28-1"	Paragraph 12 of the Complaint-Affidavit
"A-29" (part of Exhibit A-27)	Certified True Copy of the Certification issued by Atty. Joselea Y. Floria-Balleta to the BIR
"A-29-1"	Signature of Atty. Joselea Y. Floria-Balleta.
"A-30"	Negative Certification issued by Atty. Floria-Balleta to the BIR

"A-30-1"	Signature of Atty. Floria-Balleta
"A-31"	Certification issued by Atty. Joselea Y. Floria-Balleta to Atty. Arnel Manaloto
"A-31-1"	Signature of Atty. Floria-Balleta
"A-32"	Negative Certification issued by Atty. Floria-Balleta to Atty. Arnel Manaloto
"A-32-1"	Signature of Atty. Floria-Balleta

On September 24, 2018, plaintiff filed its Memorandum.[120] In its Memorandum, plaintiff's STATEMENT OF FACTS :

> "For taxable year 2011, Accused Manaloto filed his Income Tax Return (ITR) declaring a total income of only One Million Four Hundred Ninety Five Thousand Two Hundred Pesos (P1,495,200.00). Despite this declaration in his ITR however, documents gathered during BIR's investigation disclosed that Accused Manaloto was able to acquire from Datu Andal U. Ampatuan, Jr. in year 2011 a total of eight (8) real estate properties in Davao City, as evidenced by a Deed of Absolute Sale and after paying the amount of Twenty Million Pesos P20,000,000.00 therefor. Documents to prove the above allegations were presented and testified during trial in the instant case.
>
> In addition, entries in the Financial Statement (Balance Sheet) attached by Accused Manaloto in his ITR contained evidence of income which he however did not subsequently declare in his ITR. In particular, his Balance Sheet stated that he had deferred revenue in the total amount of Seventeen Million Five Hundred One Thousand Five Hundred Pesos (P17,501,500.00). Despite the receipt of said deferred revenue in 2011 however, he failed to pay the corresponding income taxes due thereon.
>
> Consequently, Accused Manaloto committed substantial under-declaration of income. Based on documents gathered and using the expenditure method of computing undeclared income, the BIR was able to ascertain Accused Manaloto's unreported income. The difference between the declared total gross income of Accused Manaloto in his ITR versus his actual amount of

[120] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1397-1444.

expenses, revealed a substantial under-declaration of more than thirty percent (30%), and such is considered prima facie evidence of fraudulent return under Section 248(B) of the NIRC of 1997,as amended, xxx xxx xxx.

The computation of the substantial under-declaration as well as the computation of the resulting tax deficiency were presented and testified during trial in the instant case."

On September 27, 2018, accused filed his Memorandum.[121]

The case was submitted for decision on October 4, 2018.

STATEMENT OF ISSUES

The issues stipulated[122] by the parties for the Court's resolution are:

1. Whether or not there is proper and legal assessment of the supposed tax liability of the accused.

2. Whether or not the computation of the Bureau of Internal Revenue regarding the supposed tax liability of the accused is sufficient basis to hold the latter criminally liable for the crimes charged.

3. Whether or not accused is guilty of the crimes charged.

Plaintiff argues that it was able to prove the guilt of the accused for the crimes charged in the Information for violating Sections 254 and 255 of the NIRC of 1997, as amended.

In his Memorandum, accused argues that the prosecution has not aptly applied the Net Worth (Inventory) Method nor the Expenditures Method in computing the tax liability of the accused; no formal investigation conducted by the BIR as required by RMO 24-2008; the burden is not upon the accused to prove that the money

---

[121] CTA Crim. Case No. O-454, Docket (Vol. III), pp. 1446-1464.
[122] CTA Crim. Case No. O-454, Docket (Vol. II), pp. 436-437.

used in purchasing the subject eight (8) parcels of land were sourced from promissory notes; the prosecution has not proven that the deferred revenue is cash receipt that is taxable; and the "BIR detailed computation" is not signed and approved by the Commissioner of Internal Revenue. In summary, accused submits that the instant cases should be dismissed because the prosecution failed to establish his guilt beyond reasonable doubt:

a. That it complied with RAMO 1-2000 and RMC No. 43-74, concerning the valuation of the taxpayer's assets at the beginning of the taxable period;

b. That there is actual cash received by the accused in connection with the deferred revenue account;

c. That it complied with Section 205 of the National Internal Revenue Code, concerning finality of the BIR Computation; and

d. That it complied with RAMO 24-2008 and RMC No. 43-74, concerning the non-conduct of the formal investigation and examination of the books of account of the accused.

THE RULING OF THE COURT

It is basic that in criminal case, the burden of proof is on the prosecution to prove the guilt of the accused beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."[123] In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.[124]

Accused is charged before this Court of the crimes of:

1. attempt to evade or defeat the payment of Value-Added Taxes (VAT) under Section 254 of the National Internal

---

[123] Section 2, Rule 133 of the Rules of Court.
[124] *Id.*

Revenue Code (NIRC) of 1997, as amended, by failure to pay VAT for taxable year 2011 (CTA Crim. Case No. O-454);

2. attempt to evade or defeat tax under Section 254 of the NIRC, as amended, by substantial under-declaration of income tax for taxable year 2011 (CTA Crim. Case No. O-455);

3. failure to file VAT Return under Section 255 of the NIRC, as amended, for taxable year 2011 (CTA Crim. Case No. O-456); and

4. failure to supply correct and accurate information in his Income Tax Return (ITR) under Section 255 of the NIRC, as amended, for taxable year 2011 (CTA Crim. Case No. O-457).

Pertinent to this are Sections 254 and 255 of the National Internal Revenue Code (NIRC), as amended, which provide:

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

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

> **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. Xxx" (*Emphasis supplied*)

Also pertinent is the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*,[125] the Supreme Court held that tax evasion connotes the integration of three factors:

1. The end to be achieved, *i.e.,* the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;

2. An accompanying state of mind which is described as being evil, in bad faith, willful or deliberate and not merely accidental; and

3. A course of action or failure of action which is unlawful.

The following pronouncement by the Supreme Court in the *Bureau of Internal Revenue vs. Court of Appeals,*[126] is enlightening as follows:

> In *Ungab v. Judge Cusi, Jr.,*[127] we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.[128] Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion.[129] However, in *Commissioner of Internal Revenue v. Court of Appeals,*[130] we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.[131] *gr*

---

[125] G.R. No. 147188, September 14, 2004.
[126] G.R. No. 197590, Nov. 24, 2014.
[127] 186 Phil. 604 (1980).
[128] *Id.* at 610-611.
[129] *Id.* at 610.
[130] 327 Phil. 1 (1996).
[131] *Id.* at 35.

CTA CRIM. CASE Nos. O-454 and O-456

These cases pertain to the charges of non-filing of VAT return and non-payment of VAT for taxable year 2011.

To sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended, by failure to pay VAT for taxable year 2011 (CTA Crim. Case No. O-454), the following elements must be established:

1. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

2. Such attempt to evade or defeat tax or the payment thereof is willful.

To sustain a conviction for failure to make or file a return under Section 255 of the NIRC of 1997, as amended, (CTA Crim. Case No. O-456), the following elements must be established:

1. Accused is a person required by the NIRC or rules and regulations to make or file a return;

2. Accused failed to make or file the return at the time or times required by law or rules and regulations; and

3. The failure to make or file the return was willful.

In this case, the prosecution's witness Ms. Legaspi admitted on cross-examination by prosecution's witness that the accused is a registered non-VAT taxpayer of Revenue District Office 21A,[132] thus, subject to percentage tax. She admitted that based on accused's ITR and financial statement, the accused is not liable to pay VAT.[133]

Moreover, the prosecution failed to show definite proof that the accused received cash for legal services rendered which could be subject to VAT. What is apparent is that the accused paid percentage tax.[134]

[132] TSN, February 6, 2017, p. 8.
[133] TSN, February 6, 2017, p. 14.
[134] Exhibit "P-8".

Considering that the first element was not complied with, we will no longer proceed with the other elements in CTA Crim. Case No. O-456. It also follows that there is no leg to stand on CTA Crim. Case No. O-454.

CTA CRIM. CASE Nos. O-455 and O-457

These cases pertain to the charges of substantial under-declaration of income and failure to supply correct and accurate information in accused's ITR for taxable year 2011.

To sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997,) as amended, (CTA Crim. Case No. O-455), the following elements must be established:

1. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

2. Such attempt to evade or defeat tax or the payment thereof is willful.

To sustain a conviction for failure to supply correct and accurate information in the return under Section 255 of the NIRC of 1997, as amended, (CTA Crim. Case No. O-457), the following elements must be established:

1. The accused is a person required under the NIRC or rules and regulations to supply correct and accurate information;

2. The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and

3. Such failure to supply correct and accurate information is willful.

In this case, the prosecution has proven that the accused is a Filipino citizen residing in the Philippines and a registered as taxpayer. He is registered as a Professional in the practice of law with Trade name THE OFFICE, ATTY. ARNEL C. MANALOTO. As such, he is required to supply correct and accurate information in the ITR.

We will now determine if there is substantial under-declaration of income.

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation.[135]

In this case, the accused's accountant (Carreon) stated that he made an adjusting entry in relation to the accused's contracts with his clients, thus:

Dr.	Other Assets	xxx	
Cr.	Deferred Revenue		xxx

There is deferred revenue when payment has been received but goods or services have not been provided. At this point, for lack of other supporting documents, the Court cannot definitely determine whether the Deferred Revenue is really a deferred revenue or an accrued revenue. An accrued income is an income for which goods or services has been provided but payment has not been made. The prosecution has failed to show definite proof of income, *e.g.* receipt, on this matter.

If Carreon merely made an error in the term or account used to record the retainer's contract and indeed meant that the income is <u>not</u> deferred but actually accrued, the same should be included in the computation for income tax purposes. "Generally, all items of income are included in gross income when earned, even though payment may be received in another tax year. All events that fix a taxpayer's right to receive the income must have happened and it must be able to figure the amount with reasonable accuracy."[136] In other words, when income is earned, it is accrued—even though payment is not yet received—and is subject to income tax.

On the other hand, if it is really a deferred income, it means it is not yet earned, thus, not subject to income tax. Nevertheless, it is subject to VAT[137] if it is deferred income. However, this is not proven by the prosecution. *gr*

---

[135] *Bureau of Internal Revenue vs. Court of Appeals,* G.R. No. 197590, November 24, 2014, *citing Chamber of Real Estate and Builders' Associations, Inc. vs. Romulo,* G.R. No. 160756, March 9, 2010, 614 SCRA 605, 627.
[136] Mertens, *Law of Federal Income Taxation,* Vol. 2, Chapter 12A, p. 100.
[137] Section 108 of the NIRC of 1997, as amended,
"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.—

The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[138]

In *People v. Judy Anne Santos y Lumagui*,[139] the accused was charged with violation of Section 255 by allegedly under-declaring her income. On the issue of willfulness, the CTA ruled as follows:

> Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation*, "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.
>
> Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. (*Citations omitted, underscoring supplied*)

In this case, there was no willfulness on the part of the accused.

Based on the foregoing discussion, for failure to prove that there is undeclared income, We cannot proceed with the elements charged in CTA Crim. Case Nos. O-455 and O-457.

Anent the allegations that the prosecution has not aptly applied the Net Worth (Inventory) Method nor the Expenditures Method in computing the tax liability of the accused and that no formal investigation conducted by the BIR as required by RMO 24-2008[140], We agree. ge

---

(A) Rate and Base of Tax.—There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

xxx xxx xxx

The term **'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, **including the amount charged for** materials supplied with the services and **deposits and advanced payments actually or constructively received during the taxable quarter for the services performed** for another person, excluding value-added tax." *(Emphasis supplied)*

[138] *Ongsiako, Jr., et al. vs. People of the Philippines*, CTA EB Crim. Case No. 031, May 26, 2015, citing Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. 0-027, November 25, 2009.

[139] CTA Crim. Case No. O-012, January 16, 2013.

[140] Revenue Memorandum Order No. 024-08, Subject: Policies and Guidelines for RATE Cases, May 9, 2008.

Under paragraph XIII (D), of HANDBOOK ON AUDIT PROCEDURES AND TECHNIQUES,[141] it was stated that "While it has been said that no opening net worth is needed when the cash expenditure method is used, the more impressive authority is to the contrary. The two steps involved in the cash expenditure method are: a) valuation of the taxpayer's assets at the beginning of the taxable period in order to determine the taxpayer's funds available for expenditure during the ensuing taxable periods and b) determination of the amount by which expenditures exceed reported income for the taxable period."

RMO 24-2008, letter F, provides:

> F. PROCEDURE
>
> A Preliminary Investigation must first be conducted to establish the prima facie existence of fraud for RATE cases. This shall include the verification and determination of the schemes and extent of fraud perpetrated by the subject taxpayer.
>
> **The Formal Investigation which includes the examination of the taxpayer's books of accounts** and accounting records and third party records, through the issuance of L/As and access letters, if necessary, **shall be conducted** only after the prima facie existence of fraud has been established. (Emphases Supplied).

In this case, it was established that on November 16, 2012, Chief, NID Atty. Sixto C. Dy, Jr. issued a Memorandum to conduct a preliminary investigation on Mr. Manaloto's tax liabilities.[142] The LOA was issued on November 26, 2012 and the complaint was filed on November 29, 2012;[143] the security guard received the said LOA; that expenditure method was used by the group in computing the tax liabilities of the accused for taxable year 2011; and that prior to the filing of the complaint affidavit, they were not able to examine the book of accounts of the accused,[144] and that the complaint was based on the Report on preliminary investigation conducted by their team.[145]

[141] (Revision - Year 2000), subject and attachment in Revenue Audit Memorandum Order No. 1-00, March 17, 2000.
[142] A7, Exhibit "P-66".
[143] TSN, July 18, 2016 Hearing, p. 13.
[144] TSN, July 18, 2016 Hearing, p.8.
[145] TSN, July 18, 2016 Hearing, p.9.

The said investigation was conducted by the group by accessing the centralized database of BIR- which is called the Integrated Tax System (ITS); looked into past tax-related filings of Mr. Manaloto; and sent access letters to various agencies of government.[146]

Clearly, the BIR failed to follow the guidelines in the proper audit. No formal investigation was even conducted.

Anent the civil aspect, Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides that "the filing of a 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." Thus, the civil aspect of these consolidated cases, are deemed simultaneously instituted and jointly determined with the instant criminal cases.

Moreover, it is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[147]

Section 205 of the NIRC of 1997, as amended, provides that "the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case **as finally decided by the Commissioner**." Thus, while "there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution",[148] Section 205 of the NIRC of 1997, as amended, "requires that in order to be included in the judgment of said civil liability, it must be the final decision of petitioner [CIR]. Thus, it refers to a formal assessment."[149] In this case, there is a computation of the deficiency income tax and deficiency VAT determined by the group who investigated the accused's possible tax liabilities, based on the COMPUTATION OF UNREPORTED INCOME USING EXPENDITURES METHOD found during the preliminary investigation. Clearly, this computation is not a formal assessment.

---

[146] A11, Exhibit "P-72".
[147] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962.
[148] *Ungab vs. Cusi, Jr., et al.*, G.R. Nos. L-41919-24, May 30, 1980.
[149] *People of the Philippines vs. Mendez*, CTA EB Crim. Nos. 038 & 039, September 8, 2017.

For easy reference, the BIR's computations[150] of accused's alleged unreported income using Expenditure Method, deficiency income tax, and deficiency VAT, signed by the group, provide:

ARNEL C. MANALOTO
FOR THE TAXABLE YEAR 2011

COMPUTATION OF UNREPORTED INCOME USING EXPENDITURES METHOD

				2011
A)	Expenditures for a given taxable year			
	1	Expenses claimed per income tax return/financial statements		
		Rental Expenses	66,000.00	
		Gas & Oil	27,192.83	
		Transportation expense	3,130.00	
		Utilities and Communication expenses	56,063.93	
		Representation and entertainment	75,784.83	
		Licenses and taxes (net of percentage tax)	700.00	
		Repairs and maintenance-Office	70,426.25	
		Accounting and legal fees	4,900.00	
		Office supplies	13,692.44	
		Toll and parking fees	1,107.73	
		Dues and membership-Professional	13,600.00	
		Printing and reproduction of copies	2,547.25	
		Miscellaneous expenses	920.00	336,065.26
	2	Personal expenses deductible or nondeductible		-
	3	Payment of debts, payables, accruals and other liabilities/drawings		-
	4	Payment of taxes		
		Income tax	43,520.00	
		Percentage tax	44,856.00	
		Expanded WHT	3,025.00	
		Registration fee	500.00	
		Documentary stamps tax	300,000.00	391,901.00
	5	Acquisition of assets		
		Other undeclared acquisition of real properties	20,000,000.00	
		Other assets per financial statements	18,734,500.00	
		Vehicles	-	
		Investments	-	38,734,500.00
		TOTAL EXPENDITURES		39,462,466.26
B)	Sources of cash			
	1	Declared income per income tax return	1,495,200.00	
	2	Non taxable receipts (Prizes, royalties)	-	

ge

[150] Exhibits "P-8" and "P-9".

3	Non taxable receipts (Dividends, donations from broad)	-	
4	Receipts subjected to transfer such as donations, inheritance	-	
5	Cash loans, if any	-	
6	Cash at the beginning of the period	-	
7	Deferred income per financial statements	17,501,500.00	18,996,700.00

Excess cash as determined per investigation	20,465,766.26
Deferred income per financial statements	17,501,500.00
TOTAL INCOME SUBJECT TO TAX	**37,967,266.26**

Prepared by: **(signed)** **GARY V. ATANACIO** **(signed)** **MARY GRACE B. PARADO**

(signed) **GERTRUDES M. EITO** **(signed)** **EVANGELINE S. CATOTAL**

COMPUTATION OF DEFICIENCY INCOME TAX
FOR THE TAXABLE YEAR 2011

Unreported income per investigation		37,967,266.26
Income tax due		
Income tax due-First P500,000.00	125,000.00	
-in excess of P500,000.00 - 32%	11,989,525.20	12,114,525.20
Surcharge Sec. 248 - 50%	6,057,262.60	
Interest - Sec. 249 (4/16/12 - 12/31/12 - 14.11%)	1,709,359.51	7,766,622.11
TOTAL DEFICIENCY INCOME TAX		**19,881,147.31**

COMPUTATION OF DEFICIENCY INCOME TAX
FOR THE TAXABLE YEAR 2011

Unreported income per investigation		37,967,266.26
Output tax		4,556,071.95
Less: Allowable input tax		-
		4,556,071.95
Add: Surcharge Sec. 248 - 50%	2,278,035.98	
Interest - Sec. 249 - (1/26/12 - 12/31/12 - 18.62%)	848,340.60	3,126,376.57
TOTAL DEFICIENCY VAT		**7,682,448.52**
TOTAL DEFICIENCY TAXES (INCOME & VAT)		**27,563,595.84**

Prepared by: **(signed)** **GARY V. ATANACIO** **(signed)** **MARY GRACE B. PARADO**

(signed) **GERTRUDES M. EITO** **(signed)** **EVANGELINE S. CATOTAL**

"In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right."[151]

WHEREFORE, premises considered, CTA Crim. Case Nos. O-454, O-455, O-456, and O-457 are **DISMISSED** for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt. Accused Arnel Cortez Manaloto is **ACQUITTED** of the crimes charged and without civil liability.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

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

---

[151] *Monteverde vs. People of the Philippines*, G.R. No. 139610, August 12, 2002.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice