REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-637**
	For: Violation of Section 255 of the NIRC of 1997
- versus -	Members:
	DEL ROSARIO, *PJ, Chairperson,* **UY,** *and* **MINDARO-GRIJLLA,** *JJ.*
PROSPERO A. PICHAY, JR., (Marikina Green Heights Subdivision Building A, Unit 16, Marikina City), Accused.	Promulgated: MAY 03 2018 1:45 pm

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RESOLUTION

For resolution is accused's **Demurrer to Evidence**, filed on December 4, 2017, with plaintiff's **Comment/Opposition (To the Demurrer to Evidence of the Accused)**, filed on March 28, 2018.

On July 7, 2017, an Information was filed before this Court against accused Prospero A. Pichay, Jr. indicting him for violation of Section 255, in relation to Sections 24(A)(1)(a), 51(A)(1)(a) and 74(A), of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or before April 15, 2010 in Marikina City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a registered individual taxpayer who derived income from sources within the Philippines, being then the Chairman of the Board of Trustees of the Local Water Utilities Administration

(LWUA) and director of LWUA Consult, Inc. and Express Savings Bank, in the total amount of Fifty Eight Million Four Hundred Forty Six Thousand Seven Hundred Ninety Seven Pesos and Ninety Four Centavos (₱58,446,797.94) did then and there willfully and unlawfully fail to file his income tax return for said taxable year 2009 and pay the corresponding tax thereon in the amount of Eighteen Million Six Hundred Sixty Seven Thousand Nine Hundred and Seventy Five Pesos and Thirty Four Centavos (₱18,667,975.34), exclusive of charges and penalties to the damage and prejudice of the Government."

After considering the allegations in the Information and personally evaluating the supporting documents, the Court found the existence of probable cause to issue a warrant of arrest on September 11, 2017. Thus, the Court ordered the issuance of the Warrant of Arrest against the accused.

Thereafter, the accused voluntarily surrendered before this Court and posted the required bail bond for his provisional liberty by way of cash bond in the amount of ₱20,000.00 on September 11, 2017.

Upon arraignment, accused waived the reading of the Information. As such, accused, with the assistance of defense counsel *de parte*, Atty. Steve M. Santillan, entered his plea of "NOT GUILTY" to the offense charged.[1]

To prove its material allegations, the plaintiff presented the following witnesses, namely: Ms. Grace G. Marohomsalic[2], Ms. Rosalita B. Devera[3] and Mr. Agakhan M. Guro[4]. Thereafter, plaintiff formally offered its documentary evidence, which the Court admitted in the Resolution dated March 21, 2018.

In assailing the sufficiency of plaintiff's evidence, accused contends that the elements essential for violation of Section 255 of the NIRC of 1997, as amended, must be proven and established beyond reasonable doubt.

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[1] Order dated September 20, 2017; Certificate of Arraignment and Waiver of Reading of Information.
[2] Minutes of the Hearing dated October 25, 2017; Exhibit "P-13".
[3] Order dated November 21, 2017; Exhibit "P-14".
[4] Order dated November 21, 2017; Exhibit "P-15".

Accused alleges that plaintiff did not offer evidence to prove that he was required to file a return. Accused points out that there was no evidence adduced showing what kind of return is being referred to. Allegedly, the Statements of Assets and Liabilities (SALN) show that the accused was the Chairman of the Local Water Utilities Administration (LWUA). Being so, accused posits that he was an employee of LWUA receiving compensation income of which the corresponding tax should be withheld and remitted by LWUA as the employer.

Accused also claims that without establishing what returns are being referred in this case, plaintiff cannot prove beyond reasonable doubt that accused failed to timely make or file a return. Plaintiff merely relied on the alleged Certification of Revenue District Office (RDO) No. 45 with the limited statement that accused did not file his income tax returns (ITR) (BIR Form No. 1701) in the said RDO. Accused stresses that in the clarificatory questions propounded by this Court to plaintiff's witness, it was established that plaintiff did not take further steps to assure that accused may have filed his returns in another RDO. Despite the accused's declaration in his Counter-Affidavit that he recalls filing his returns in the RDO of Quezon City, accused points out that the Bureau of Internal Revenue (BIR) neither secured a certification from the said RDO, nor a certification from its National Office.

Accused avers that plaintiff simply assumed that since there was an increase in the net worth of accused and there was no ITR filed for taxable year (TY) 2009 with RDO No. 49 (sic), the latter failed to file a return.

As regards willfulness of failing to file a return, accused contends that plaintiff did not offer any evidence showing that the accused knowingly, intentionally and with specific intent did not file the returns.

With respect to the alleged deficiency, accused insists that the assessment is baseless on the ground that it lacks factual and evidentiary support. Accused likewise asserts that his right to due process was grossly violated because he was not informed that he was being assessed. Accused alleges that he was not the one who personally received the Letter of Authority (LOA). Accused claims that the person who served the LOA was not presented and there was no proof that the one who received the LOA was an authorized representative and how the same was related to the accused.

Accused further alleges that the breakdown of increase in net worth for TY 2009 did not provide any explanation on the basis of the method of computation and did not take into account possible sources of other income of the accused. Accused insists that he did not personally receive the Preliminary Assessment Notice (PAN) and Formal Letter of Demand. Accused further avers that his right to due process was grossly violated because he was not informed of the assessment process.

On the other hand, plaintiff opposes the Demurrer to Evidence on the ground that it has sufficiently proven beyond reasonable doubt the elements of Section 255 of the NIRC of 1997, as amended, for willful failure to file an income tax return and pay the corresponding taxes.

Plaintiff alleges that the parties have stipulated that the accused is a registered taxpayer of BIR RDO No. 45 – Marikina City with taxpayer identification number (TIN) 110-060-350-000.

Plaintiff further alleges that it presented evidence to prove that the accused is a resident Filipino citizen and as such, he is mandated by law to declare his income for each taxable year as well as to file the required tax returns and pay the corresponding taxes due thereon as required by Sections 24(A)(1)(a), 51(A)(1)(a), and 74(A) of the NIRC of 1997, as amended; that accused earned income in TY 2009 in the amount of ₱58,446,797.94; that the SALN of the accused shows that his net worth for the periods ending December 31, 2008 and December 31, 2009 amounted to ₱30,053,748.00 and ₱89,556,545.94, respectively; that the increase in the net worth of the accused in 2009 by ₱58,496,797.94 reveals that there is undeclared taxable income.

According to plaintiff, Section V(B) of Revenue Memorandum Circular (RMC) No. 10-75 expressly sanctions and recognizes the SALN filed by a taxpayer as a best evidence of the government in using the net worth method to compute the tax liabilities of an accused in criminal tax evasion cases.

Plaintiff avers that the testimony of Mr. Agakhan M. Guro and Exhibit "P-3" proved that the failure of the accused to file an ITR for TY 2009 was willful and deliberate. The alleged repetitive non-filing of ITR by the accused for more than 10 years sufficiently shows deliberate and willful intent. Plaintiff points out that accused was the

Chairman of the Board of Trustees of the LWUA in 2009. Also, it can be allegedly taken through judicial notice that the accused was formerly and presently a Congressman in the House of Representatives; thus, it is reasonably expected that he is aware of his alleged obligation to file his ITR pursuant to existing tax laws.

Further, plaintiff insists that the other allegations in the Demurrer to Evidence are without factual and legal basis. Plaintiff explains that the Information expressly states that the accused failed to file his income tax return. Plaintiff argues that even if the accused was legally an employee of the LUWA, it does not lead to the legal conclusion that an employee cannot have other sources of taxable income which is not compensation income subject to withholding tax. Allegedly, the increase in the net worth of the accused between 2008 and 2009 shows prima facie evidence of income to which the Department of Justice (DOJ) and this Court found probable cause. According to plaintiff, it is a fundamental principle in tax law that a taxpayer is required to file his income tax return in the RDO where he is a legal resident of or his principal place of business. The alleged erroneous filing of an income tax return in another district is contrary to the express provisions of the Tax Code.

Plaintiff also contends that the assessment process is irrelevant in a Demurrer to Evidence. Plaintiff asserts that there was proper service of the Letter of Authority (LOA), PAN, and Final Assessment Notice/Formal Letter of Demand (FAN/FLD) to the accused and the latter failed to deny receiving the aforesaid documents. However, plaintiff admits that its witness, Ms. Grace G. Marohomsalic expressly testified that she served the FLD, the Details of Discrepancies and the Assessment Notices personally to Miranda, Anastacio, Loterte Law Offices (MAL Law Offices) which entered its appearance as counsel for the accused before the Department of Justice (DOJ). Plaintiff maintains that since the FLD, the Details of Discrepancies and the Assessment Notices are incidents of the case pending then before the DOJ and the filing of a criminal action before this Court necessarily carries with it the filing of the civil aspect thereof, the service of the aforementioned documents to MAL Law Offices as counsel of the accused was proper.

A *demurrer to evidence* is defined as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue". The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.

In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[5]

In the present case, the accused is being charged for violation of Section 255 of the NIRC of 1997, as amended, or willful failure to file income tax return for taxable year 2009. To sustain a conviction for failure to make or file a return under the aforesaid provision, 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 resolving the instant demurrer to evidence, the Court takes into consideration the ruling of the Supreme Court in the case of *Republic of the Philippines vs. Gimenez, et al.*[6] that an order granting demurrer to evidence is a judgment on the merits, *viz*:

> "xxx An order granting demurrer to evidence is a judgment on the merits. This is because while a demurrer 'is an aid or instrument for the expeditious termination of an action,' it specifically 'pertains to the merits of the case.'
>
> In *Cabreza, Jr., et al. v. Cabreza*, this court defined a judgment rendered on the merits:
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> > A judgment may be considered as one rendered on the merits 'when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections'; or when the judgment is rendered 'after a determination of

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[5] *Rivera vs. People of the Philippines*, G.R. No. 163996, June 9, 2005.
[6] G.R. No. 174673, January 11, 2016.

> which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.' (Citations omitted)

To reiterate, '[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought.' The order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits:

> As it is settled that an order dismissing a case for insufficient evidence is a judgment on the merits, it is imperative that it be a reasoned decision clearly and distinctly stating therein the facts and the law on which it is based. (Citation omitted)"

Accordingly, the granting of a demurrer to evidence should be exercised with caution, taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy, as pronounced in the case of *Bautista, et al. vs. Cuneta-Pangilinan*[7], to wit:

> "The granting of a demurrer to evidence should, therefore, be exercised with caution, taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy. In such instances, although the decision of the court may be wrong, the accused can invoke his right against double jeopardy. Thus, judges are reminded to be more diligent and circumspect in the performance of their duties as members of the Bench, always bearing in mind that their decisions affect the lives of the accused and the

[7] G.R. No. 189754, October 24, 2012.

individuals who come to the courts to seek redress of grievances, which decision could be possibly used by the aggrieved party as basis for the filing of the appropriate actions against them."

Thus, the Court shall carefully scrutinize the evidence presented by plaintiff and determine whether they are competent or sufficient to establish a *prima facie* case against the accused.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient, therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[8]

Plaintiff presented the following documentary evidence to prove the essential elements of the offense:

Exhibits	*Description*
P-1	Letter of Authority with No. LOA-211-2011-00000223 dated July 20, 2011
P-2	BIR Registration System Individual Details dated January 11, 2011
P-3	Certification with the letterhead of Bureau of Internal Revenue Region No. 7, RDO No. 45, Marikina City with the name "Jose G. Luna, Assistant Revenue District Officer – OIC" of RDO No. 45 dated July 12, 2011 with a signature above.
P-4	Sworn Statement of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial Connections and Identification of Relatives in Government Service (Required by R.A. 6713) ("SALN") of Prospero A. Pichay Jr. as of December 2008
P-5	SALN of Prospero A. Pichay Jr. as of December 2009
P-6	Prospero A. Pichay Jr. Breakdown of Increase in Net Worth for the Year 2009
P-7	Complaint Affidavit with Annexes dated July 21, 2011

[8] *Ong, et al. vs. People of the Philippines, et al.*, G.R. No. 140904, October 9, 2000.

P-7-A	Signature of Grace G. Marohomsalic
P-8	Referral Letter dated July 21, 2011 addressed to Hon. Leila de Lima
P-9 P-9-A	Joint Reply-Affidavit with Annexes dated December 13, 2011 Annex A of P-9, BIR ITS Printout
P-10	Notice of Informal Conference dated February 6, 2013
P-11 and P-11-A	Preliminary Assessment Notice Attached Details of Discrepancies
P-12, P-12-A, P-12-B	Formal Letter of Demand (FLD), Attached Details of Discrepancies and Attached Assessment Notices (FAN) with Assessment No. EAS-IT 20091046

Likewise, plaintiff presented the testimonial evidence of its witnesses, namely: Ms. Grace G. Marohomsalic, Ms. Rosalita B. Devera and Mr. Agakhan M. Guro.

The Court shall now determine the existence of the essential elements of the offense charged.

The Information alleges that the accused, being the Chairman of the Board of Trustees of the LWUA, and director of LWUA Consult, Inc. and Express Savings Bank, derived income from sources within the Philippines.[9]

To prove that the accused had an alleged income for year 2009, plaintiff submitted the accused's SALNs for years 2008[10] and 2009[11], which were secured from the LWUA.[12] Plaintiff assumes that the increase in the net worth of the accused from 2008 to 2009 indicated the receipt of income. As a resident citizen, accused is allegedly required to file an ITR pursuant to Section 24(A)(1)(a), 51(A)(1)(a) and 74(A) of the NIRC of 1997, as amended,[13] but he failed to do so.[14]

[9] Information, docket, p. 6.
[10] Exhibit "P-4", docket.
[11] Exhibit "P-5", docket.
[12] Q7, Exhibit "P-14".
[13] Exhibit "P-7", docket, p. 65.
[14] Exhibit "P-3", docket.

The Court finds plaintiff's evidence insufficient to prove that accused is required to make or file an ITR.

There is no question that income which the accused received is taxable pursuant to Section 24(A)(1)(a) of the NIRC of 1997, as amended. However, plaintiff failed to present any document proving that income was paid to the accused.

It is worthy to note that plaintiff was able to secure a copy of the SALNs of the accused but failed to present evidence as to the amount of compensation income allegedly paid by LWUA to the accused.

Even assuming that the accused indeed received compensation income from LWUA as a Chairman, the plaintiff failed to establish that the accused was also the director of LWUA Consult, Inc. and Express Savings Bank and likewise deriving compensation from the same as director.

Section 51(A)(1) and (2)(b) of the NIRC of 1997, as amended, states:

> "SEC. 51. *Individual Return.* –
>
> (A) *Requirements.* -
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> xxx xxx xxx
>
> (2) The following individuals shall not be required to file an income tax return.
>
> xxx xxx xxx
>
> (b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income

tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided,* That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return;"

In relation thereto, Section 79 of the NIRC of 1997, as amended, provides:

"SEC. 79. *Income Tax Collected at Source.* –

(A) *Requirement of Withholding.* — Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner."

During the clarificatory questions made by this Court to plaintiff's witness, Ms. Grace G. Marohomsalic, she testified that:[15]

"JUSTICE DEL ROSARIO

At any rate, Ms. Marohomsalic, would you be able to recall how much is the supposed income which the Accused received and which was not reflected in a corresponding Income Tax Return?

MS. MAROHOMSALIC

Your Honors, during that time, the taxpayer did not file his Income Tax Return in the District where he was registered. So we have no copy of Income Tax Return during that time so we requested the LUA to give us or to submit to us the Statement of Assets, Liabilities and Networth of the Accused.

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[15] TSN dated October 25, 2017, pp. 17-18, 21-23 and p. 25.

JUSTICE DEL ROSARIO
For the Accused to be liable for the non-payment of income tax and non-declaration of an income for the year 2009, you are aware that the Accused should have earn[ed] the income in that particular year 2009, is it not?

MS. MAROHOMSALIC
Yes, Your Honor.

JUSTICE DEL ROSARIO
So what would be the source of the income of the Accused for 2009 that was not reflected in an Income Tax Return based on your investigation?

MS. MAROHOMSALIC
Actually, your Honors, the Accused did not file his Income Tax Return so we based our computation based on SALN.

JUSTICE DEL ROSARIO
Yes precisely. You are saying that the Accused should be liable criminally because the Accused did not file an Income Tax Return and that Income Tax Return should have reflected an income derived in 2009?

MS. MAROHOMSALIC
Yes, your Honors.

JUSTICE DEL ROSARIO
So, what would be the source of the income of the Accused for 2009 that was not reflected in the Income Tax Return, do you have an idea?

MS. MAROHOMSALIC
I think he should declare his income tax as a Director of LUA Consult, Inc. and as Director of Express Savings Bank. And if there are other income that he derived, he should

declare it and file it. Or if he has business, he should file it as mix income.

JUSTICE DEL ROSARIO

Did you specifically get to know how much income was received by the Accused from LUA Consult, Inc. in the year 2009?

MS. MAROHOMSALIC

We have no idea about the compensation that he earned from LUA Consult, Inc. during 2009, your Honors.

JUSTICE DEL ROSARIO

How about with respect to Express Savings Bank, did you actually get an exact information how much he earned from Express Savings Bank in the year 2009 that he should have reflected in the Income Tax Return?

MS. MAROHOMSALIC

Your Honors, during our investigation, we did not get the actual amount that he earned from Express Savings Bank.

JUSTICE DEL ROSARIO

How about the Accused as the Chairman of the Board of Trustees of the LUA? Did you actually get information as to the actual income which the Accused received in the year 2009?

MS. MAROHOMSALIC

We did not get the actual amount, your Honors.

JUSTICE DEL ROSARIO

So apparently, you just assume that the Accused received income from these three (3) entities just because there's an increment in his networth in his SALN?

MS. MAROHOMSALIC

Yes, Your Honors, and other business taxes that he has.

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JUSTICE DEL ROSARIO

By the way, when income is actually paid by entities, is it not that there is a particular document, certificate or return that the entities submit to the BIR saying that certain persons were paid by these entities?

MS. MAROHOMSALIC

Your Honors, when we file the case before the Department of Justice, there is no income tax payment made by the Accused *(interrupted)*

JUSTICE DEL ROSARIO

No, okay, let's go one by one. Let's say the LUA, in the year 2009 the LUA must have submitted documents to the BIR, is it not [indicated] that payment has been made to each personnel particularly payment has been made to the Accused? Is that not a usual practice whether Tax Returns or Certificate of Creditable Withholding Tax?

MS. MAROHOMSALIC

I remember, they submitted to us a Certification that the Accused paid a certain but that is for the year 2008 and 2010 only."

Based on the foregoing, the Court cannot determine whether the accused is required by law to file an ITR considering that the above-quoted provision does not require the filing of an ITR for individuals deriving purely compensation income from a single employer and the income tax is correctly withheld.

Even though the Information alleges that accused was then the Chairman of the Board of Trustees of LWUA and director of LWUA Consult, Inc. and Express Savings Bank, depicting accused as an individual deriving compensation income concurrently from three employers, consequently, required to file an ITR, plaintiff failed to present proof that indeed accused is concurrently employed by these three employers and how much compensation income he derived from these employers. The Court cannot just assume a fact without any proof aside from a self-serving and uncorroborated testimony.

It is worthy to note that Ms. Marohomsalic testified that the accused has other business taxes; nonetheless, there is no supporting evidence presented to establish such fact.

Moreover, the Certification[16] from RDO 45 presented by plaintiff merely states that accused "with Tax Identification Number 110-060-350-000 and with registered business address at Marikina Green Heights Subd., Bldg A Unit 16 Marikina City did not file his Income Tax Return (BIR Form 1701) for Calendar Years 1999-2005 and 2008 to 2009 in this district." The Certification is silent as to how accused is registered with said district, was he registered as a sole proprietor or as an employee? However, one of entries on the BIR Registration System Individuals Details dated January 11, 2011[17] shows that the Taxpayer Type of accused was indicated as "LOCAL EMPLOYEE".

In view of the foregoing, the Court finds it unnecessary to discuss further the existence of the willfulness of the accused in not filing an ITR since plaintiff has failed to establish that the accused was required to file the said return.

In sum, plaintiff has failed to present sufficient evidence to establish a *prima facie* case for violation of Section 255 of the NIRC of 1997, as amended.

The Court emphasizes the ruling of the Supreme Court in the case of *Macayan, Jr. vs. People of the Philippines*[18] that:

> "Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:
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> > Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is

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[16] Exhibit "P-3".
[17] Exhibit "P-2".
[18] G.R. No. 175842, March 18, 2015.

> entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be 'presumed innocent until the contrary is proved.' 'Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.' Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

> We ruled in *People v. Ganguso*:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error,

> produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
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> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. (Citations omitted)"

As to the civil aspect of this case, the same is deemed simultaneously instituted and jointly determined with the instant criminal case pursuant to Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, which 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."

It is settled that an order granting a demurrer to evidence is tantamount to an acquittal of the accused.[19] However, it is also 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.[20]

In view thereof, the Court shall now decide on the civil aspect of this case.

Accused invokes the issue that his right to due process was violated on the ground that he did not receive personally the LOA, PAN and FLD.

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[19] *People of the Philippines vs. Sandiganbayan (First Division), et al.*, G.R. No. 164577, July 5, 2010.

[20] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962.

On cross-examination, plaintiff's witness, Ms. Marohomsalic testified that she has no knowledge of the relation of the person who received the LOA with the accused, to wit:

ATTY. ANASTACIO
Q Would you know who was the one who served the Letter of Authority?

MS. MAROHOMSALIC
A Mr. Jake Castillo, our Receiving Officer at the National Investigation Division.

ATTY. ANASTACIO
Q And would you tell us who, would you know who receive this Letter of Authority?

MS. MAROHOMSALIC
A The one who received the Letter of Authority is Ms. Janette Sangalang and told Mr. Jake Castillo that the Letter of Authority will be forwarded to the counsel of the Accused or the Accused.

ATTY. ANASTACIO
Q And the person you mentioned who received the Letter of Authority, do you know how is this person related to the Accused?

MS. MAROHOMSALIC
A I have no knowledge about the relation of the Accused to the one who received the Letter of Authority.[21]

A Letter of Authority must be served to the concerned taxpayer within 30 days from its date of issuance, otherwise, it shall become null and void.[22] Considering that plaintiff failed to establish that the subject LOA was served to the taxpayer or his authorized representative within 30 days from date of issuance, then, the said LOA is null and void. Hence, the subject LOA has no force or effect

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[21] TSN dated October 25, 2017, p. 14.
[22] Revenue Audit Memorandum Order No. 1-00.

and the assessment conducted by the BIR pursuant to the said LOA is deemed unauthorized.

Moreover, a careful examination of the FLD, Details of Discrepancies and Assessment Notices[23] presented by plaintiff reveals that these documents were received by Ms. Mariaelen T. Oczmo of Miranda Anastacio Loterte Law Offices (MAL Law Offices) on May 30, 2014 but annotated with the words "As copy furnished", which means that the said law office was merely furnished a copy of these documents.

Upon perusal of the records, plaintiff did not present any other evidence that would show that the BIR actually served the FLD and Assessment Notices to the accused or his authorized representative. The accused stresses that MAL Law Offices only appeared as counsel for accused during the preliminary investigation before the DOJ, and not before the BIR's alleged assessment. Hence, the Court finds that plaintiff failed to establish that the FLD and Assessment Notices were properly served on and actually received by accused.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[24], the Supreme Court held that:

> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**." (*Emphasis supplied*)

Accused's deficiency income tax was computed using the net worth method wherein the BIR compared the increase in accused's net worth as of December 31, 2008 and accused's net worth as of December 31, 2009 and considered the difference as unreported income.

As aforequoted, during the clarificatory questions propounded by the Court on plaintiff's witness, Ms. Marohomsalic, she confirmed that she had no idea how much was the amount of compensation

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23 Exhibits "P-12", "P-12-A", P"-12-B".
24 G.R. No. 128315, June 29, 1999.

that accused received from LWUA, LWUA Consult, Inc. and Express Savings Bank, Inc. in 2009. She also admitted that she just assumed that accused received income from these three (3) entities based on the increase in accused's net worth in 2009.

It is settled that assessments must be based on actual facts and not on mere assumptions or presumptions. In *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation*,[25] the Supreme Court upheld the decision of the CTA when it cancelled the assessment issued by the BIR against Island Garment Manufacturing Corporation on alleged "overstated" exportations for being merely based on assumption or on mathematical computations. The Supreme Court ruled:

> "The basis of respondent corporation's deficiency income and advance sales taxes for 1962 and 1963 was held by petitioner to be the overdeclaration of its re-exportation of finished embroidered goods, computed as follows: xxx xxx
>
> **This discrepancy was arrived, at by the petitioner after an inspection of the boxes in which the finished goods were packed and concluding through "mathematical computations" that it was impossible for respondent corporation to re-export back in said boxes the total number of pieces it claims to have manufactured.**
>
> In disposing of petitioner's contention, respondent Court held:
>
>> **'By alleging that he employed mathematical computations in ascertaining the quantity of finished products actually manufactured and exported by petitioner, respondent concedes at least that his assessments were based on mere inferences and presumptions. Likewise, by stating that it was physically impossible for such number of cartons with such volume**

[25] G.R. No. L-46644, September 11, 1987.

> **capacity to contain such exportation, or for petitioner to have manufactured and exported such finished garments, respondent admits that his assessments were not based on actual facts but merely on approximations and calculations**. And [in averring] that the raw material discrepancies in yards, [were] arrived at by mere inferences and presumptions, [and] subsequently became the basis of the assessments for advance sales tax and for income tax, respondent failed to indicate his nebulous position how the advance sales tax or the undeclared income from sales of embroidery textile materials in pesos and centavos were arrived at. Moreover, since fraud is imputed to petitioner, fraudulent intent was deduced from surmises and conjectures, unsupported by clear and [convincing] proof to this effect.
>
> An assessment fixes and determines the liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. The assessment must be based on actual facts**. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. (Collector of Internal Revenue vs. Benipayo, L-13656, January 31, 1962, 4 SCRA 182). . . .'" (*Boldfacing supplied*)

In the case at bar, the BIR failed to establish by competent evidence the specific amount of compensation that accused received from the three (3) entities that should have been declared in his ITR. In coming up with the assessment against the accused, the BIR based its computation on mere presumption and not on actual facts which makes the assessment invalid and insufficient basis of accused's civil liability.

Consequently, the corresponding Formal Letter of Demand and Assessment Notice issued for taxable year 2009 shall be cancelled.

In view of the foregoing, the Court deems it unnecessary to discuss the other issues raised by accused.

WHEREFORE, premises considered, accused's **Demurrer to Evidence** is **GRANTED**. Accordingly, the instant case is **DISMISSED**. Further, the Formal Letter of Demand and Assessment Notice Number EAS-IT-2009-1046 for taxable year 2009 are **CANCELLED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice