REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Respondent,

-versus-

GLORIA V. KINTANAR,
Petitioner.

C.T.A. EB CRIM. NO. 006
(C.T.A. CRIM. CASE NOS. O-033 & O-034)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

DEC 0 3 2010

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by petitioner Gloria V. Kintanar from the Decision dated August 26, 2009 rendered by the Former Second

Division of this Court in C.T.A. Crim. Case Nos. O-033 and O-034, both for Violation of *Section 255 of RA 8424, otherwise known as the Tax Reform Act of 1997*, the dispositive portion of which reads, as follows:

> "WHEREFORE, judgment is hereby rendered:
>
> 1) In Criminal Case No. O-033, finding accused Gloria V. Kintanar, GUILTY beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.
>
> As regards the civil liability, accused is ORDERED to PAY deficiency income tax for taxable year 2000, the amount of P3,156,470.22, inclusive of penalties, surcharges and interests, plus 20% interest per annum counted from April 12, 2005 until full payment thereof, pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended; and
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> 2) In Criminal Case No. O-034, finding accused Gloria V. Kintanar, GUILTY beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED to pay a fine in the amount of P10,000.00, with subsidiary

> imprisonment in case accused has no property with which to meet the said fine, or unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.
>
> As regards the civil liability, accused is ORDERED TO PAY deficiency income tax for taxable year 2001, the amount of P3,147,518.77, inclusive of penalties, surcharges and interests, plus 20% delinquency interest per annum counted from April 12, 2005 until full payment thereof, pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.
> No costs.
>
> SO ORDERED."

THE FACTS

The facts of the case, as culled from the records, are as follows:

In two (2) separate Informations, both dated February 7, 2006, Gloria V. Kintanar (hereafter "petitioner") was charged with *Violation of Section 255 of RA No. 8424*, the accusatory portions of which read, as follows:

CRIMINAL CASE NO. O-033

> "That on or about the 16th day of April, 2001, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above named-accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file her Income Tax Return (ITR) for the taxable year 2000 on or before

the 15th day of April 2001, did, then and there, willfully, unlawfully and feloniously fail to file her ITR with the Bureau of Internal Revenue for the year 2000, to the damage and prejudice of the Government in the estimated amount of P1,329,319.95 exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-034

"That on or about the 16th day of April, 2002, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file her Income Tax Return (ITR) for the taxable year 2001 on or before the 15th day of April 2002, did, then and there, willfully, unlawfully and feloniously fail to file her ITR with the Bureau of Internal Revenue for the year 2001, to the damage and prejudice of the Government in the estimated amount of P1,517,242.12 exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

When arraigned, petitioner pleaded "not guilty" to the crimes charged. Trial ensued.

THE PROSECUTION'S EVIDENCE

From the evidence adduced by the prosecution, particularly the testimony of seven witnesses, namely: Simplicio Cabantac, Romeo Naranjo, Atty. Christina Barroga, Julio Alcasabas, Michael Cajandab, Carmencita Flores and Assistant Commissioner Alberto A. Pio de Roda, and documentary evidence presented, the following facts have been established:

Based on a confidential information received by the National Investigation Division of the BIR on the alleged tax evasion scheme of spouses Benjamin G. Kintanar Jr. and Gloria V. Kintanar for non-filing of income tax returns, Armando R. Rosimo ("Chief Rosimo"), Chief of the Tax Fraud Division, issued an Access Letter dated July 18, 2002, addressed to the Revenue District Officer of RDO 52, Parañaque City. In said letter, the Revenue District Officer was requested to furnish revenue officers/investigating team of Simplicio V. Cabantac, Evangeline Catotal, Aurelio Agustin Zamora and Section Chief Sixto C. Dy Jr. with photocopies of spouses Kintanar's 1) income tax return (ITR), with Financial Statements; 2) Value Added Tax (VAT) Returns (monthly & quarterly); 3) Percentage Tax Returns (monthly & quarterly); and 4) BIR Registration Certificate.

Chief Rosimo issued another Access Letter dated July 19, 2002, addressed to the Managing Director of Forever Living Products Philippines, Inc. ("FLPPI") to furnish the named revenue officers with certification of the total income payments/commissions and bonuses earned by spouses Kintanar, together with the amount of taxes withheld for calendar years 1996 to 2001, as distributors or independent contractors of FLPPI.

Granting the request of Chief Rosimo, Revenue District Officer Carmelita R. Bacod of RDO No. 52 issued a Certification, dated September 17, 2002, stating therein that spouses Kintanar have no record or file for the years 1999 to 2001. On the other hand, Michael T. Cajandab, Comptroller of FLPPI, sent a letter-reply dated January 30, 2003 to Chief Rosimo, indicating therein the total income of Gloria V. Kintanar for calendar years 1999 to 2001.

On December 12, 2002, Chief Rosimo issued a Memorandum of Assignment to Revenue Officer Evangeline S. Catotal, thru the group supervisor Sixto C. Dy Jr., to conduct a thorough preliminary investigation and to ascertain the veracity of the confidential information filed against the spouses Kintanar on their alleged tax evasion scheme.

After the initial investigation, the investigating team found that spouses Kintanar were able to generate a large amount of income, as distributors or independent contractors of FLPPI.

As a result of said investigation, a Letter of Authority No. 00029663, dated March 28, 2003, together with the list of documents required to be submitted, were issued by the BIR, authorizing the investigating team to examine the books of accounts and other accounting records for all internal revenue taxes for taxable years 1999 to 2002 of spouses Kintanar. Said LOA was received by petitioner's husband on April 3, 2003. However, spouses Kintanar failed to submit the required documents; thus, a Second Request for Presentation of Records, dated April 21, 2003, was issued by Sixto C. Dy, Jr., addressed to spouses Kintanar, which letter was received by a certain S/G George Llorente on April 23, 2003.

Thereafter, a Final Notice, dated May 5, 2003, was issued by Chief Rosimo demanding from spouses Kintanar to present the needed documents for examination, and failure to comply therewith will cause the issuance of a *subpoena duces tecum* . Said notice was received by S/G George Llorente.

Despite several notices, spouses Kintanar failed to submit the required documents; thus, on June 11, 2003 a s*ubpoena duces tecum* was issued by Internal Revenue Officer Milagros V. Regalado, ordering spouses Kintanar to appear before the Chief Prosecution Division on June 25, 2002 at 10:00

a.m. and to bring their books of accounts and other accounting records for taxable years 1999 to 2002.

Again, spouses Kintanar failed to comply with said order. Chief Rosimo sent another letter dated September 3, 2003 and informed spouses Kintanar that the result of the investigation conducted by the Tax Fraud Division on both internal revenue tax liabilities for taxable years 1999 to 2002 had already been submitted to the Tax Fraud Division and requested them to appear; failing which shall be deemed a waiver of their right to conference.

On December 9, 2003, a Preliminary Assessment Notice, together with the details of discrepancies, for taxable years 1999 to 2002, were issued by the BIR and sent to spouses Kintanar, giving them 15 days to explain the discrepancies.

Again, spouses Kintanar failed to comply. Consequently, a Memorandum dated February 26, 2004 was submitted by the investigating team, addressed to the Deputy Commissioner stating that spouses Kintanar failed to file their protest, within 15 days and recommended the issuance of a Formal Demand Letter and Assessment against the spouses.

A Formal Letter of Demand, dated February 26, 2004, together with Assessment Notices Nos. ES-IT-1999-0083, ES-VAT-1999-0084, ES-IT-2000-0085, ES-VAT-2000-86, ES-IT-2001-0087, ES-VAT-2001-0088, ES-IT-2002-0089, ES-VAT-2002-0090, were issued against the spouses requesting them to pay their deficiency income and VAT liabilities.

On August 31, 2004, a letter of protest, together with photocopies of their joint income tax return for 2000 to 2002, were sent to Atty. Arnel Guballa, Chief of the National Investigation Division by petitioner's husband, who undertook to submit additional documents and agreements, within 60 days thereof.

In response thereto, a letter dated September 30, 2004, of Chief Guballa was sent to spouses Kintanar, informing them that no documents have yet been received by the NID and spouses Kintanar have 60 days from the time the protest was filed, or until November 3, 2004, within which to submit supporting documents; otherwise, the assessment shall become final, executory and demandable.

Again, spouses Kintanar failed to comply with said demand. As a result, a Final Decision on Disputed Assessment, dated December 13, 2004, was issued by the BIR, indicating therein that spouses' protest against their alleged deficiency income tax and VAT was denied for failure to submit the required documents, within the 60 day reglementary period; thus, the assessment had become final, executory and demandable.

The prosecution also presented the heads of three BIR RDOs, namely: Christina C. Barroga of RDO No. 52, Parañaque, and Romeo E. Naranjo of RDO No. 40 of Cubao, who both testified that no record of any ITRs was filed by petitioner, nor her husband for taxable years 2000 and 2001. Revenue District Officer Julio G. Alcasabas of RDO No. 54 Trece Martires City, Cavite, was also presented, and testified that petitioner has no record of any ITRs filed, except that she is registered as a "one-time transaction taxpayer" on June 28, 2000, representing a one-time transaction for capital gains tax and documentary stamp tax. Also, Assistant Commissioner Alberto A. Pio de Roda of the Information Systems Operation Services of the BIR issued a Certification and testified that BIR has no record of petitioner having filed her ITRs for the years 1999 to 2001.

Based on said investigation, and the documents obtained, the prosecution found that petitioner failed to file her ITRs for the years 1999 to

2001 and found her liable for deficiency income taxes, arising from income earned from FLPPI.

THE DEFENSE'S EVIDENCE

On the other hand, the defense presented petitioner herself and her husband, Benjamin G. Kintanar, and documentary evidence, such as Certificate of Creditable Tax Withheld for the years 2000 and 2002 *(Exhibits "1" to "8")*, Joint Annual Income Tax Returns *(Exhibits "9" & "10")*, BPI checks nos. 0013649 dated March 15, 2000 *(Exhibit "11")* and 0101844 dated March 15, 2002 *(Exhibit "12")*, and 2 identical Certifications issued by a certain Revenue District Officer Ernesto T. Kho of RDO No. 28, Novaliches *(Exhibits "13" & "14")*, which tend to establish the following:

Petitioner Gloria V. Kintanar, the first witness for the defense, substantially testified that she filed her ITRs for taxable years 2000 and 2001 on March 28, 2001 and April 5, 2002 respectively, and denies having willfully, unlawfully and feloniously failed to file her ITRs on said years; that she has no personal knowledge of actual filing of said returns because it was her husband who filed their ITRs; that she receives commission from FLPPI from 1996 up to the present, through check payments, and encashed or cleared them at BPI-North Greenhills Branch, where she maintains an account no. 257004248; and that she knows Michael Cajandab, the Comptroller of FLPPI; at present, her address is at Unit 122 Doňa Juana Townhomes, Doňa Juana Subdivision, Rosario, Pasig City; however, from the years 2000 to 2001, she resided at No. 2 Granada St., Merville Park Subdivision, Parañaque City.

Benjamin G. Kintanar Jr., the second witness for the defense, substantially testified that he is the husband of petitioner; that he was born at St. Francis II, Pasig City, and resided thereat from 1972 to 1997; thereafter, he bought a house in Merville, Parañaque, where he resided from 1997 to 2005; at present, they reside at Pasig City in the address mentioned by the petitioner, wherein they are registered taxpayers; that he is involved in networking business; and is one of the top dealers of FLPPI and obtained his income from said company from years 1999 to 2001; that he was the one who filed their ITRs; that they filed joint ITRs from years 1997 to 2004, through their hired accountant, Marina Mendoza; that it was Mendoza who prepared the ITRs; that he gave all the documents necessary for filing the ITRs, specifically W2 Forms (Creditable Tax Withheld Certificates) to

Mendoza; that he relied on Mendoza in preparing their ITRs; that he just browsed the ITRs; thus, he has no knowledge of the amount and address stated therein and where their ITRs were filed.

THE FORMER SECOND DIVISION'S RULING

In its Decision, the Former Second Division gave credence to the testimonial and documentary evidence adduced by the prosecution and found petitioner guilty beyond reasonable doubt of Violation of *Section 255 of the NIRC of 1997, as amended,* in both C.T.A. Crim. Case Nos. O-033 and O-034.

Not satisfied, petitioner filed her "Motion for Reconsideration", which the Former Second Division denied in its Resolution dated November 26, 2009.

Hence, this instant Petition for Review assigning the following:

ASSIGNMENT OF ERRORS

I

THE SECOND DIVISION OF THE HONORABLE COURT OF TAX APPEALS ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF

VIOLATION OF SECTION 255 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

II

THE SECOND DIVISION OF THIS HONORABLE COURT OF TAX APPEALS ERRED IN FINDING THAT THERE WAS EVIDENT LACK OF CONCERN OF THE ACCUSED FOR INTENTIONALLY DISREGARDING HER TAX RESPONSIBILITIES TO THE GOVERNMENT.

On February 1, 2010, without necessarily giving due course to the petition, We required respondent to file comment, not a motion to dismiss, within ten (10) days from notice.

On February 15, 2010, respondent filed a "Motion for Extension of Time to File Comment", which was granted in a Resolution dated February 17, 2010.

On April 5, 2010, without respondent' s comment, the Court *En Banc* ordered both parties to submit their simultaneous memoranda, within thirty days from notice; afterwhich, the petition shall be deemed submitted for decision.

On April 14, 2010, respondent filed a "Motion to Admit Attached Comment (Re: Petition for Review *En Banc*)", which the Court granted and respondent's "Comment" was admitted in a Resolution dated April 26, 2010.

On May 5, 2010, petitioner filed her "Comment/Opposition (Motion to Admit attached Comment Re: Petition for Review *En Banc*)".

On May 12, 2010, respondent filed its "Memorandum of the People of the Philippines".

On June 16, 2010, the Court *En Banc* noted petitioner's "Comment/Opposition" to respondent's "Motion to Admit Attach Comment" and submitted the case for decision, without petitioner's memorandum.

On July 12, 2010, petitioner filed her "Motion for Reconsideration with Leave of Court to file Memorandum", which the Court granted. Accordingly, the Resolution dated June 16, 2010 submitting the case for decision was recalled and set aside in a Resolution dated July 29, 2010.

On August 4, 2010, petitioner's "Motion for Leave of Court to Admit Attached Memorandum" was granted, and her Memorandum was admitted. The case was deemed submitted for decision on August 16, 2010.

THE COURT *EN BANC'S* RULING

The petition is without merit.

After a careful review and study of the evidence on record, We find nothing that would compel us to reverse the decision of the Former Second Division of this Court.

In both C.T.A. Crim. Case Nos. O-033 and O-034 petitioner was charged with Violation of *Section 255 of the NIRC of 1997, as amended*, which provides, as follows:

> "**SEC. 255**. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax, and Refund Excess Taxes Withheld on Compensation.- **Any person required under this Code or by rules and regulations promulgated thereunder** to pay any tax, **make a return**, keep any record, or supply correct and accurate information, who willfully fails to keep any 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 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.
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> xxx." (Emphasis supplied)

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Section 255 of the NIRC of 1997, as amended, contemplates four different situations punishable by law, each of which constitutes failure to perform in a timely manner, an obligation imposed by the NIRC of 1997, as amended, to wit:

1) To pay any tax;

2) To make a return;

3) To keep any record; and

4) To supply correct and accurate information.

In the case at bench, petitioner is being charged under said provision for failure to make or file a return. The elements of Violation of *Section 255 of the NIRC of 1997, as amended*, for failure to make or file a return, are, as follows:

1) The accused is a person required to make or file a return;

2) The accused failed to make or file the return at the time required by law; and

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

As proven by the prosecution, all the aforementioned elements are present in this case.

PERSON REQUIRED TO MAKE OR FILE A RETURN

As regards the first element, the prosecution has established that petitioner is duty bound to make or file a return.

Section 51 of the NIRC of 1997, as amended, provides:

"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:

(a) Every Filipino citizen residing in the Philippines;

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(4) The income tax return shall be filed in duplicate by the following persons:

(a) A resident citizen- on his income from all sources;

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(D) Husband and Wife. –Married individuals, whether citizens, resident or nonresident aliens, who do not derive income purely from compensation, shall file a return for the taxable year to include the income of both spouses, but where it is impracticable for the spouses to file one return, each spouse may file a separate return of income but the returns so filed shall be consolidated by the Bureau for purposes of verification for the taxable year."

Corollary thereto, *Section 74 of the same Code* provides:

"SEC. 74. Declaration of Income Tax for Individuals.-

(A)In General.- Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, self-employment income consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner."

On direct examination, petitioner testified that she and her husband were engaged in business and earned income in the form of commissions, as distributors or independent contractors of FLPPI. Petitioner's testimony was amply corroborated by Michael Cajandab, Comptroller of FLPPI, who testified that FLPPI paid petitioner her commissions, through checks, for the

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years 1999, 2000 and 2001 *(TSN dated January 14, 2008, pp. 37-39)*. Petitioner admitted that she received the checks issued by FLPPI, as her payment/commission, which she encashed or cleared at the BPI North-Greenhills, wherein she maintains an Account no. 257004248 *(TSN dated June 4, 2008, pp. 21-23)*.

Considering that petitioner earned a substantial income, as distributor/independent contractor of FLPPI; she is, therefore, required to make or file her annual income tax return, pursuant to the aforequoted provisions.

PETITIONER FAILED TO MAKE OR FILE THE RETURN AT THE TIME REQUIRED BY LAW

As regards the second element, the testimonial and documentary evidence adduced by the prosecution shows that petitioner failed to make or file her ITRs for taxable years 2000 and 2001.

Pursuant to *Section 51, subsections (B) and (C) (1), of the NIRC of 1997, as amended*, a person with legal residence or principal place of business in the Philippines, shall file his return with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized

Treasurer of the city or municipality. The return shall be filed on or before the 15th day of April of each year covering income for the preceding taxable year.

Under the above-provision, petitioner was supposed to register, file her ITR and pay the corresponding income taxes due with the authorized agent bank, RDO, Collection Agent or duly authorized Treasurer of the city, where she has her legal residence or principal place of business. However, upon thorough investigation and from the evidence adduced by the prosecution, petitioner has no record of filing of the required ITRs, within the reglementary period, with any of the RDOs of the BIR.

The prosecution has established that petitioner was a resident of No. 2 Granada St., Merville Park Subdivision, Parañaque, for the years 2000 and 2001. Therefore, petitioner should have filed her ITRs in Parañaque City.

However, there is no record of filing of the required ITRs. In fact, a Certification dated September 17, 2002 was issued by Carmelita R. Bacod, Revenue District Officer of RDO No. 52 of Parañaque City, stating that petitioner has no record on file for the years 1999 to 2001. Another Certification, dated July 20, 2007, was issued by Atty. Christina C. Barroga, OIC-Assistant Revenue District Officer of RDO No. 52 of Parañaque City, who testified that petitioner, with TIN 206-631-823, is not a registered taxpayer of said revenue district.

Furthermore, upon verification of Assistant Commissioner Alberto A. Pio de Roda of the Information Systems Operations Service of the BIR, there is no record showing that petitioner has filed her ITRs for years 1999 to 2001. The only existing record of petitioner is that she was registered as a "one-time transaction taxpayer" for capital gains and documentary stamp tax, at RDO No. 54 of Trece Martires City, Cavite. A Certification was issued by Julio G. Alcasabas, Revenue District Officer of RDO No. 54, confirming that no record of petitioner's ITRs has been filed before said RDO.

For her defense, petitioner presented 2 ITRs for taxable years 2000 and 2001, respectively, as well as 2 undated Certifications issued by a certain Ernesto T. Kho, allegedly the Revenue District Officer of RDO No. 28, Novaliches City.

Upon a careful examination of said documentary evidence, We cannot give credence to said exhibits and sustain the following findings of the Former Second Division:

> "A careful examination of the ITRs presented by accused reveals that the same are of doubtful authenticity, materially flawed with the following irregularities surrounding its existence to wit:
>
> 1) The subject ITRs are incomplete in itself, as both failed to indicate the TIN of the accused, and the Community Tax Certificate (CTC) Number, Place and Date of issuance and the Amount paid (Boxes 6, 107-110, respectively);
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> 2) The subject ITRs contain an address (Blk. 73, Lot 24 Lagro Subdivision, Quezon City) which, as admitted by the Kintanar spouses, had never been their legal residence;
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> 3) The subject ITRs bear the stamping "Received" by RDO No. 40 of Cubao, Quezon City, which is NOT the district office that has jurisdiction over the spouses' given address (Lagro Subdivision, Quezon City) in the subject ITRs, hence, even if authentic, were filed at the wrong venue; and
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> 4) The husband of the accused, who purportedly caused the preparation of the subject ITRs, clearly admitted that he did not even read the contents of the subject ITRs and does not know up to the present where these were supposedly filed by Marina Mendoza.
>
> Furthermore, the prosecution was able to prove that no ITR was filed, either by the accused or her husband, or by anyone on their behalf, for the taxable years 2000 and 2001 at RDO No. 40, as testified to by Romeo E. Naranjo, the highest ranking official of RDO No. 40, which has jurisdiction over Cubao, Quezon City, where the supposed ITRs were purportedly filed. This was further verified by Geraldine C. Mariñas, Chief of Document Processing Section of said district.

As regards the two undated, identically worded Certifications from RDO No. 28, Novaliches, Quezon City, the same are tainted with various defects, to wit:

1) On the face of the document; it is undated and does not bear the official dry seal of the BIR;

2) Although RDO No. 28, Novaliches, Quezon City, is the revenue district which has jurisdiction over the address (Blk. 73, Lot 24, Novaliches, Quezon City) reflected in accused's ITRs for taxable years 2000 and 2001, it appears however that said ITRs were filed at RDO No. 40 Cubao, Quezon City, as shown by the stamping "Bureau of Internal Revenue, Received, RDO 40, Cubao, Quezon City". Thus, RDO No. 28 is not the proper revenue district to verify and process the said ITRs. The Certifications did not mention what returns were indeed verified and processed by the signatory, hence, no evidentiary value; and

3) The defense did not present, nor was there an attempt to present Ernesto T. Kho, the supposed signatory of the Certifications to attest to the truthfulness, authenticity and due execution of the same.

In the light of the foregoing inconsistencies, the Certifications are accorded no probative value. Moreover, granting for the sake of argument that the Certifications were validly issued, the same nevertheless have no favorable effect upon herein accused Gloria V. Kintanar because said Certifications refer only to her husband, Benjamin G. Kintanar, Jr., and not to the spouses Kintanar."

For all the foregoing, the Court is convinced that petitioner failed to make or file a return, within the period required by law.

THE FAILURE TO MAKE OR FILE A RETURN WAS WILLFUL

As regards the third element of "willfulness", the prosecution has sufficiently proven beyond reasonable doubt that petitioner deliberately failed to make or file a return.

Willful in the tax crimes statutes means voluntary, intentional violation of a known legal duty, and bad faith or bad purpose need not be shown *[Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116,85-1 USTC 9178 (CA7 1985), in which the Court, Citing U.S. v. Moore, 627 F2d 830 (CA7 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns].*

An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse *(Black's Law Dictionary, 5th ed., p.1434).*

Petitioner claims that she did not actively participate in the filing of her joint ITRs with her husband in the years 2000 and 2001 and entrusted the fulfillment of such duty to her husband; that her husband hired a certain Marina Mendoza, an accountant, who was tasked by her husband to handle the filing and payment of their tax obligations; thus, there was no voluntary, intentional, deliberate, or malicious failure to file a return on her part.

Petitioner's contention cannot be sustained.

First, the prosecution has clearly established that under the law, petitioner and her husband, as married individuals, who do not derive income purely from compensation, are obliged to file their ITRs for taxable years 2000 and 2001 for the income they earned, as distributors/independent contractors of FLPPI. Thus, petitioner's sole reliance on her husband to file their ITRs is not a valid reason to justify her non-filing, considering that she knew from the start that she and her husband are mandated by law to file their ITRS.

Second, being an experienced businesswoman, and having been an independent distributor/contractor of FLPPI since 1996, petitioner ought to know and understand all the matters concerning her business. This includes knowledge and awareness of her tax obligation in connection with her business. Petitioner should know how much are her tax dues, the details stated on the ITRs, where the same are filed, and other important facts related to the filing of her ITRs; after all, these matters concern her finances.

Under *Rule 131, Section (3) (d) of the Rules on Evidence*, it is presumed that a person takes ordinary care of his concern.

Hence, the natural presumption is that petitioner knows what are her tax obligations under the law. As a businesswoman, she should have taken ordinary care of her tax duties and obligations and she should know that their ITRs should be filed, and she should have made sure that their ITRs were filed. She cannot just left entirely to her husband the filing of her ITRs. In fact, one of the stipulated facts in the Pre-Trial Order dated October 1, 2007, which petitioner admitted is that "as married individuals who do not derived income purely from compensation, accused and her spouse are obligated under the Tax Code, in particular *Section 51(A)(1), 51(B), 51(C), 51(D), 74(A) and 74(B)*, to file income tax returns for taxable years 2000. In 2001, on or before the 15th day of April 2001 & 15th day of April 2002, respectively, to include the income of both spouses".

Petitioner cannot find solace on her claim that her husband hired an accountant, who was tasked to handle the filing and payment of their tax obligations. This allegation was a bare testimony of petitioner's husband, and yields nothing, but mere uncorroborated statements. Mere allegations are definitely not evidence *(Coronel vs Court of Appeals, 263 SCRA 35);* thus, it cannot be used as basis for a court's decision.

Furthermore, the Court finds no affirmative acts on the part of the petitioner to make sure that her obligation to file her ITRs had been fully complied with. Petitioner testified that she does not even know how much was her tax obligation, nor did she bother to inquire or determine the facts surrounding the filing of her ITRs. Such neglect or omission, as aptly found by the Former Second Division, is tantamount to "deliberate ignorance" or "conscious avoidance".

The evidence adduced by the prosecution has also established that petitioner was duly informed that no ITRs were filed, nor recorded under her name. There were several notices sent to her by the BIR to comply with her tax obligations, but she opted not to comply. The prosecution has clearly established that the following notices of the BIR were sent and received by petitioner:

1) LOA No. 00029663, dated March 28, 2003, which was received by petitioner's husband on April 3, 2003;
2) Second Request for Presentation of Records, dated April 21, 2003, was received by a certain George Llorente on April 23, 2003;
3) Final Notice, dated May 5, 2003, was received by George Llorente;
4) Subpoena Duces Tecum, dated June 11, 2003;
5) Letter by Chief Rosimo, dated September 3, 2003;
6) Preliminary Assessment Notice, dated December 9, 2003, together with the Details of Discrepancies, for taxable years 1999 to 2002;
7) Memorandum, dated February 26, 2004;
8) Formal Letter of Demand, dated February 26, 2004, together with Assessment Notices;
9) Letter of Chief Guballa, dated September 30, 2004; and
10) Final Decision on Disputed Assessment, dated December 13, 2004.

Despite the several notices given to petitioner starting from April 3, 2003, the evidence on record shows that only a protest letter made by petitioner's husband dated August 31, 2004 was the reply given by the petitioner. It took petitioner more than one year to send said reply. Evidently, such non-compliance with the BIR's notices clearly shows petitioner's intent not to file her ITRs.

For all the foregoing, this Court is convinced that the prosecution has established the guilt of petitioner beyond reasonable doubt.

Finding no reversible error, the Court *En Banc* affirms the assailed decision and Resolution of the Former Second Division of this Court.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED.** The assailed Decision dated August 26, 2009 and Resolution dated November 26, 2009 of the Former Second Division are hereby **AFFIRMED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Concurs with Justice Castañeda,Jr.)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice