REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused.

CTA Crim. Case No. O-522
For: Violation of Section 254 of the NIRC of 1997, as amended (Tax Evasion)

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused

CTA Crim. Case No. O-523
For: Violation of Section 255 of the NIRC of 1997, as amended (Failure to Supply Correct and Accurate Information)

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused

CTA Crim. Case No. O-525
For: Violation of Section 254 of the NIRC of 1997, as amended (Tax Evasion

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CTA Crim. Case No. O-554
For: Violation of Section 255 of the NIRC of 1997, as amended (Failure to Supply Correct and Accurate Information)

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,

Promulgated:

Accused. MAR 12 2018 9:31 am

x- x

D E C I S I O N

MANAHAN, *J.*:

These are consolidated cases[1] for alleged violations of the National Internal Revenue Code (NIRC) of 1997, as amended, for tax evasion and failure to supply correct and accurate information for taxable years 2008 and 2009 through the filing of the Income Tax Return on 2009 and 2010, respectively.

Antecedents

Indicted are Kingsam Express Incorporation and Samuel S. Santos under CTA Criminal Case Nos. O-522, O-523, O-525, and O-554 for violation of Sections 254 (tax evasion) and 255 (failure to supply correct and accurate information) of the 1997 NIRC, as amended, in their income tax returns for taxable years 2008 and 2009, allegedly committed as follows:

CTA Crim. Case No. O-522

> "That on or about 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, accused Kingsam Express Incorporation and Samuel Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income for taxable year 2008, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the estimated amount of Nine Million Eight Hundred Twenty Eight Thousand Pesos (Php9,828,000.00) inclusive of increments, as of the time

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[1] Docket, CTA Crim. Case No. O-522, Vol. II, Resolution dated April 1, 2016, pp. 600-601; and Resolution dated September 19, 2016, pp. 686-687.

of the filing of the complaint, to the damage and prejudice of the government.

CONTRARY TO LAW."

CTA Crim. Case No. O-523

"That on or about 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php1,623,734.60 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2008, to the damage and prejudice of the government in the estimated amount of Twenty Three Million Seven Hundred Sixty Thousand Pesos (Php23,760,000.00) inclusive of increments, representing accused's income tax deficiency as of the time of the filing of the complaint.

CONTRARY TO LAW."

CTA Crim. Case No. O-525

"That on or about 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income for taxable year 2009, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the estimated

> amount of Twenty Three Million Seven Hundred Sixty Thousand Pesos (Php23,760,000.00), inclusive of increments, as of the time of the filing of the complaint, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-554

> "That on or about 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2008 by making it appear that the corporation's income/revenue for taxable year 2008 was in the amount of Php1,212,773.00 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php13,650,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2008, to the damage and prejudice of the government in the amount of Four Million Ninety Five Thousand Pesos (Ph4,095,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.
>
> CONTRARY TO LAW."

The prosecution moved to amend the abovementioned information on November 23, 2015,[2] October 23, 2015,[3] and November 13, 2015,[4] for CTA Crim. Case Nos. O-522, O-523 and O-525, respectively, due to several observations[5] by this Court on the

[2] Docket, CTA Crim. Case No. O-522, Vol. II, Motion to Amend Information and Admit Amended Information with Compliance, pp. 493-495.
[3] Docket, CTA Crim. Case No. O-523, Motion to Amend Information and Admit Amended Information, pp. 274-275.
[4] Docket, CTA Crim. Case No. O-523, Motion to Amend Information and Admit Amended Information, pp. 285-286.
[5] Docket, CTA Crim. Case No. O-522, Vol. II, Resolution dated October 21, 2015, pp. 487-489; CTA Crim. Case No. O-523, Resolution dated October 14, 2015, pp. 270-273; Resolution dated November 5, 2015, pp. 283-284.

abovementioned information. Hence, the following are the amended informations, to wit:

CTA Crim. Case No. O-522[6]

> "That on or about 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income for taxable year 2008, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the estimated amount of Four Million Ninety Five Thousand Pesos (Php4,095,000.00) exclusive of surcharge and interest, as of the time of the filing of the complaint, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-523[7]

> "That on or about 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php1,623,734.60 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2009, to the damage and prejudice of the government in

[6] Docket CTA Crim. Case No. O-522, Vol. II, Amended Information, pp. 496-498.
[7] Docket CTA Crim. Case No. O-523, Amended Information, pp. 276-278.

> the estimated amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-525[8]

> "That on or about 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income for taxable year 2009, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the estimated amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00), exclusive of surcharge and interest, as of the time of the filing of the complaint, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

Finding probable cause against the accused, this Court issued Warrants of Arrest on November 27, 2015,[9] and January 14, 2016,[10] for CTA Crim. Case Nos. O-522, and O-523 & O-525, respectively.

Accused Santos was arrested[11] on February 2, 2016 for CTA Crim. Case Nos. O-522, and O-523 & O-525 but was able to post a cash bail bond and this Court ordered his release and set the arraignment of the accused.[12]

On April 1, 2016, CTA Crim. Case Nos. O-522, O-523, and O-525 were consolidated in this Court.[13] Accused was arraigned

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[8] *Id.*, at 287-289.
[9] Docket, CTA Crim. Case No. O-522, Vol. II, Warrant of Arrest, p. 518.
[10] Docket, CTA Crim. Case No. O-523, Warrant of Arrest, p. 300.
[11] Docket, CTA Crim. Case No. O-522, Vol. II, Certificate of Detention, p. 559.
[12] *Id.*, Resolution dated February 2, 2016, p. 547; Docket, CTA Crim. Case No. O-523, Resolution dated February 2, 2016, pp. 309-310.
[13] *Supra.*, Note 1.

on July 4, 2016 for the above-mentioned cases where the accused entered a plea of "NOT GUILTY."[14] The Preliminary Conference for said cases was conducted on August 8, 2016.[15]

On May 4, 2016, an Information was filed against the accused under CTA Crim. Case No. O-554 for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.[16] Finding probable cause against the accused, this Court issued Warrants of Arrest on June 8, 2016.[17]

Accused Santos was arrested[18] on July 19, 2016 for CTA Crim. Case No. O-554 but was able to post a cash bail bond.[19] The arraignment of the accused for the said offense was held on August 24, 2016 where the accused entered a plea of 'NOT GUILTY."[20]

On September 19, 2016, CTA Crim. Case No. O-554 was consolidated with CTA Crim. Case Nos. O-522, O-523, and O-525. On October 12, 2016, the pre-trial of said consolidated cases was conducted[21] and a Pre-Trial Order was issued on October 19, 2016.[22]

Trial ensued and the prosecution presented only one witness, Medardo Tipon. On January 30, 2017, the Prosecution submitted its Formal Offer of Prosecution's Evidence[23] which was resolved in the Court's Resolution[24] dated March 28, 2017.

On April 3, 2017, accused moved for leave of court[25] to file demurrer to evidence[26] which was admitted by this Court on May 4, 2017.[27] However, said demurrer of evidence was denied for lack of merit.[28]

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[14] Docket, CTA Crim. Case No. O-522, Vol. II, Order dated July 4, 2016, pp. 649-650.
[15] *Id.,* Minutes of Preliminary Conference, pp. 655-662.
[16] Docket, CTA Crim. Case No. O-554, Information, p. 6.
[17] Docket, CTA Crim. Case No. O-554, Warrant of Arrest, p. 264.
[18] Docket, CTA Crim. Case No. O-554, Certificate of Detention, p. 285.
[19] Docket, CTA Crim. Case No. O-554, Resolution dated July 19, 2016, pp. 294-295.
[20] Docket, CTA Crim. Case No. O-554, Certificate of Arraignment, p. 303.
[21] Docket, CTA Crim. Case No. O-522, Vol. II, Order dated October 12, 2016, p. 693.
[22] *Id.* at 694-703.
[23] Docket, CTA Crim. Case No. O-522, Vol. III, pp. 909-915.
[24] *Id.* at 1151-1152.
[25] *Id.* at 1155-1158.
[26] *Id.* at 1159-1192.
[27] *Id.,* Resolution dated May 4, 2017, pp. 1196-1198.
[28] *Id.*, Resolution dated June 20, 2017, pp. 1207-1216.

Thereafter, accused proceeded with the presentation of their evidence. The following were called to the witness stand: Samuel S. Santos, and Benigno M. Cubacub, Jr.

On August 22, 2017, accused filed their Formal Offer of Evidence[29] which this Court[30] partially admitted and several exhibits were denied admission.

On October 27, 2017, the prosecution filed its Memorandum.[31] On the other hand, the accused filed their Memorandum,[32] through registered mail on November 21, 2017 which was received by this Court on December 13, 2017.

Thus, on December 11, 2017, the instant case was deemed submitted for decision.[33]

Issues[34]

The parties stipulated the following issue:

Whether or not accused is guilty of violating Sections 254 (tax evasion) and 255 (failure to supply correct and accurate information) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Ruling of the Court

In order to resolve these consolidated cases, it is best to show first the facts and circumstances as established during the trial based on the documentary evidence and the testimonies of the witnesses on what really transpired. The prosecution's theory of its case is that the combined acquisition cost of the subject buses is the undeclared income of the accused corporation while the defense argues that the allegation of the former is not true since the acquisitions were made through financing or loans.

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[29] *Id.* at 1339-1376.
[30] *Id.*, Resolution dated September 20, 2017, pp. 1472-1473.
[31] *Id.* at 1474-1483.
[32] *Id.* at 1487-1515.
[33] *Id.*, Resolution dated December 11, 2017, p. 1485; Resolution dated December 15, 2017, p. 1517.
[34] Docket, CTA Crim. Case No. O-522, Vol. II, Pre-Trial Order dated October 19, 2016, p. 695.

The evidence revealed that the accused acquired seven (7) KING LONG Model XMQ6119 buses in 2008.[35] Also, eighteen (18) HYUNDAI buses were acquired by the accused in 2009 through loans as admitted by accused Samuel S. Santos in his Judicial Affidavit,[36] to wit:

> Q27. Do you have any proof to show that the money that was used to purchase those **eighteen (18) buses** partly came from loans released by various banks?
>
> A27. Yes, ma'am. I have here with me several documents, that can prove that I have secured several loans from different banks in order for me and Kingsam to purchase the buses in 2009.
>
> xxx xxx
>
> Q34. How about the reason why the acquisition by Kingsam Express Incorporation of **eighteen (18) buses** for the year 2009, was not reflected as assets in the Financial Statements of Kingsam Express Incorporation submitted for the year 2009?
>
> A34. We started purchasing thoses (sic) buses for the year 2009 only in August 2009, ma'am, and started paying monthly amortization in September 2009. The payment for those buses in 2009 partly came from my wife's funds as her investment in Kingsam and party (sic) from the proceeds of the loans which we secured from various banks. During that time, we have not used those buses since we do not have the Certificate of Public Convenience yet issued by the LTFRB. That is why, I think we cannot consider it as an asset yet because we have not derived any benefit from it. Again, it is Kingsam's accountants and auditor who prepared our financial statements and income tax returns, who should know better because I mainly relied on their expertise.
>
> Q35. How about the reason why those **eighteen (18) buses** were not declared as liabilities.
>
> A35. For the same reason as earlier explained, ma'am. I left the discretion to the accountants and auditor that we hired since they are experts in the field of accountancy. (*Emphasis supplied*)

However, the prosecution was able to provide evidence only for the acquisition of seven (7) KING LONG Model

[35] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits A-33 to A-33-D, pp. 1407-1412; Exhibit A-34, p. 1413; and Exhibit A-35, p. 1414.
[36] Docket, CTA Crim. Case Nos. O-522, Vol. III, pp. 1217-1233.

XMQ6119 buses in 2008[37] and seventeen (17) HYUNDAI buses in 2009.[38] These buses are shown below:

Engine No.	Plate No.
2008 Acquisition	
FE6TC-003944H	TXR929
FE6TC-003941H	TXR919
FE6TC-003957H	TXR939
FE6TC-003881H	TXY126
FE6TC-003885H	TXX923
FE6TC-003896H	TXX975
FE6TC-003882H	TXX933
2009 Acquisition	
D6AVW014916	TXX963
D6AVX025069	TXX964
D6AVY035057	TXY171
D6AVY032181	TXY145
D6AVY035190	TXY931
D6AVX025666	TXX945
D6AVY032698	TXX803
D6AVX025836	TXX866
D6AVX025644	TXX854
D6AVY032081	TXX793
D6AVT000396	TXX974
D6AVY034852	TXX984
D6AVY032803	TXX823
D6AVX024440	TXX844
D6AVV015807	TXX845
D6AVY034702	TXX856
D6AVY034718	TXX813

The prosecution proved that the acquisitions in 2008 of the seven Kinglong buses were made through two (2) Deeds of Sale[39] between accused Kingsam Express Incorporation (Kingsam for brevity), as represented by accused Samuel S. Santos as its President, and Philippine International Bus, Inc. (PIBI) with acquisition cost of Php5,850,000.00 for the first three (3) Kinglong buses and Php7,800,000.00 for the additional four (4) Kinglong buses. cm

[37] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits P-7-1 to P-7-2, P-8-1 to P-8-3, and P-9-1 to P-9-4, pp. 1072-1082.
[38] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits P-10-1 to P-10-17, pp. 1085-1101.
[39] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits P-7-1 and P-7-2, pp. 1072-1073 and 1077-1078, respectively.

The defense presented evidence showing that acquisition of these buses was made through financing or loans. The first 3 buses (KING LONG Model XMQ6119 with Plate Nos. TXR929, TXR919, and TXR939) were financed by a loan through a Promissory Note (PN) with Chattel Mortgage[40] issued by the Philippine Business Bank under the following terms:[41]

Purchase Price	P 16,800,000.00
Less: Down payment	5,040,000.00
Amount to be Financed	P 11,760,000.00
Interest	4,225,368.00
Other Charges	479,592.00
Amount Payable	P 16,464,960.00

As shown above, the total cost of said buses is not Php5,850,000.00 but Php16,800,000.00 or a unit cost of Php5,600,000.00. The payment for the amortization of said buses was sourced also from a loan taken from AMA Rural Bank of Mandaluyong, Inc.[42] amounting to Php11,200,000.00, to wit:

Plate No.	PN No.	Date Started	Amount Financed
TXR929/TXX923	AU-11-04816	11-Mar-11	5,600,000.00
TXR919/TXR939	AU-11-04817	14-Mar-11	5,600,000.00
Total			11,200,000.00

As to the other 4 buses (KING LONG Model XMQ6119 with Plate Nos. TXX126, TXX923, TXX975, and TXX933), the defense presented a Contract to Sell[43] dated March 8, 2008 between accused Kingsam, as represented by accused Samuel S. Santos as its President, and PIBI which reveals the following terms and conditions of said acquisition, to wit:

Contract Price/Unit	P 4,000,000.00
Total Amount	P 16,000,000.00
Terms:	
Downpayment upon signing of contract (which was on April 30, 2008)	P 400,000.00
Upon delivery of units	2,080,000.00
Balance payable thru bank financing	7,280,000.00
Balance from AMA Bank	6,240,000.00

om

[40] *Id.*, Exhibits A-33 to A-33-D, pp. 1407-1412.
[41] *Id.*, Exhibit A-33-B, p. 1409.
[42] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits A-38 to A-38-A, pp. 1424-1425.
[43] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit A-34, p. 1413; Exhibit A-35, p. 1414.

Total Amount	P 16,000,000.00

Based on the evidence adduced by the defense, the following check payments were directly paid to PIBI, to wit:[44]

Date	BPI Check No.	Amount
3/15/2011	119331	576,333.33
4/15/2011	119332	576,333.33
5/15/2011	119333	576,333.33
6/15/2011	119334	576,333.33
7/15/2011	119335	576,333.33
8/15/2011	119336	576,333.33
9/15/2011	119337	576,333.33
10/15/2011	119338	576,333.33
11/15/2011	119339	576,333.33
12/15/2011	119340	576,333.33
1/15/2012	119341	576,333.33
2/15/2012	119342	576,333.33
3/15/2012	119343	576,333.33
4/15/2012	119344	576,333.33
5/15/2012	119345	576,333.33
6/15/2012	119346	576,333.33

The check numbers were within the series of checks marked as Exhibit A-52 which indicate the names of Samuel S. Santos and Maritess F. Santos, the latter being admitted by accused Santos to be his wife in his statement above.

Loans were also taken by the accused from AMA Rural Bank of Mandaluyong, Inc.[45] and RCBC Leasing & Finance Corporation[46] for the said buses, to wit:

AMA Rural Bank of Mandaluyong, Inc.

Plate No.	PN No.	Date Started	Amount Financed
TXR929/**TXX923**	AU-11-04816	11-Mar-11	5,600,000.00
TXY126	AU-11-05617	25-Sep-11	2,250,000.00
TXX975	AU-11-04807	8-Mar-11	3,000,000.00
TXX933	AU-10-04632	30-Jan-11	3,000,000.00

RCBC Leasing & Finance Corporation

Plate No.	PN No.	Date Booked	Original Amount
TXY126	OLR5841	08/06/10	3,240.000.00

cm

[44] Id., Exhibits A-35-A to A-35-B, pp. 1415-1416.
[45] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibits A-38 to A-38-A, pp. 1424-1425.
[46] *Id.*, Exhibits A-39 to A-39-A, pp. 1426-1427.

As to the acquisition made in 2009, the prosecution presented a Deed of Absolute Sale[47] dated October 12, 2009 entered by Accused Samuel S. Santos as the vendor and Accused Kingsam represented by a certain Leandro S. Santos as the vendee for twelve (12) Hyundai buses amounting to Php24,000,000.00. It appears from such document that the unit cost of each of said Hyundai buses amounts to Php2,000,000.00.

The evidence also reveals that fourteen (14) of said 17 buses were financed by loans taken from AMA Rural Bank of Mandaluyong, Inc., RCBC Leasing & Finance Corporation, and Insular Bank,[48] to wit:

AMA Rural Bank of Mandaluyong, Inc.

Plate No.	PN No.	Date Started	Amount Financed
TXX964/TXX974 **TXX984**/TXR222 TXR111	AU-12-05963	8-Aug-12	5,012,000.00
TXY931	AU-10-03044	16-Feb-10	2,940,000.00
TXX803	AU-09-02939	18-Jan-10	2,940,000.00
TXX866	AU-09-02880	20-Dec-09	2,940,000.00
TXX854	AU-09-02941	18-Jan-10	2,940,000.00
TXX793	AU-09-02940	18-Jan-10	2,940,000.00

RCBC Leasing & Finance Corporation

Plate No.	PN No.	Date Booked	Original Amount
TXX964/TXX974 **TXX984**	OLR5632	08/20/09	6,720.000.00
TXX844/TXX845 **TXX823**	OLR5661	10/12/09	6,720.000.00

Insular Bank

Plate No.	PN No.	Date Booked	Amount Financed
TXY126	IRB-1231-2009	12/4/2009	5,000.000.00

The defense also presented documents[49] that a loan was taken from ORIX METRO Leasing and Finance Corporation allegedly for two (2) 2009 Hyundai Aero bus. However, Exhibit A-34-A was not admitted,[50] hence, there was no evidence that

[47] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-7-3, p. 1083.
[48] *Id.*, Exhibit A-42, pp. 1430-1431.
[49] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit A-43, p. 1432; Exhibit A-43-B, p.1435; Exhibit A-43-C, p. 1436; and A-43-D, p. 1437.
[50] Id., Resolution dated September 20, 2017

will show what particular Hyundai bus among those buses acquired in 2009 was covered by such loan.

Out of the twenty-four (24) buses acquired by accused Kingsam in 2008 and 2009, only twenty (21) bus units were proven to have been acquired through loans or financing. On the other hand, the three (3) Hyundai buses (with Plate Nos. TXX963, TXX945, and TXX813) that were acquired in 2009 have no evidence that they were taken through loans or financing.

Having established the factual milieu, the Court is now ready to rule on the following criminal cases:

<u>CTA Crim. Case Nos. O-522 & O-554</u>

In the case of *Commissioner of Internal Revenue v. The Estate of Benigno S. Toda Jr.*,[51] the Supreme Court gave three factors that will constitute tax evasion, to wit:

> 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," "willfull,"or "**deliberate** and not accidental"; and (3) **a course of action or failure of action which is unlawful**. (*Emphasis supplied*)

Now the question is, are these factors present in the instant case? We believe so.

In order to determine the accused's unlawful intention, it is important to determine first its courses of action or acts that constitute badges of fraud.

***First*, the copies of three (3) Deeds of Sale submitted to the Land Transportation Office (LTO) were falsified documents and accused Samuel S. Santos had knowledge of such fact.**

As shown above, the records of the case reveal that the unit cost of the buses in the two (2) Deeds of Sale for the 7 *vm*

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[51] G.R. No. 147188, September 14, 2004.

Kinglong buses acquired in 2008 is different in the Promissory Note (for the 3 Kinglong buses) and the Contract to Sell (for the additional 4 Kinglong buses) that were adduced as evidence by the accused.

Copies of the 2 Deeds of Sale show that the 3 Kinglong buses amount to Php5,850,000.00 while the four additional buses amount to Php7,800,000.00, hence, having a unit cost of Php1,950,000.00 for each Kinglong bus.

However, in the PN and Contract to Sell, as shown above, the unit cost amounts to Php5,600,000.00 for each of the 3 Kinglong buses and Php4,000,000.00 for each of the 4 additional buses.

Such deeds of sale, which were notarized, are public documents,[52] hence, the substantial under-declaration of the contractual amount constitutes falsification of public documents which may be prosecuted in other jurisdiction. There is no evidence per records of this case that the actual transactions were disclosed in the said office.

Such deliberate misstatement of the contractual amount and non-disclosure of the actual transaction to LTO was known to accused Santos. He even admitted and even justified such act in his judicial affidavit, to wit:[53]

> Q19. Mr. Witness, it appears that the four (4) buses which you just mentioned and subject of a Contract to Sell, is also the same four (4) buses that were subject of a Deed of Sale executed on 16 June 2008 marked as Exhibit "P-7-2" for the Prosecution. Can you please explain to us why was there a Deed of Sale executed in 16 June 2008 when you negotiated to have the purchase price paid only in March 2011?
>
> A19. That Deed of Sale was executed in order that Kingsam can secure the loan that it needed for the

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[52] Section 19(b), Rule 132, Rules of Court
"Section 19. *Classes of Documents.* — For the purpose of their presentation evidence, documents are either public or private.
Public documents are:
(a) xxx xxx;
(b) Documents acknowledged before a notary public except last wills and testaments; and
(c) xxx xxx."

[53] Docket, CTA Crim. Case No. O-522, Vol. III, Judicial Affidavit of Samuel S. Santos, Exhibit A-53, p. 1223.

> purchase of the four (4) buses from a bank, ma'am. In the loan business, it is ordinary in financing agencies that the ownership of the property being subject of a loan be transferred first, before the financing agencies will release the loan being secured. That is the reason why we executed that Deed of Sale, ma'am.

On the other hand, the Deed of Sale (DOS) for the 2009 acquisition[54] shows that accused Santos was the vendor of said buses while accused Kingsam, represented by a certain Leandro S. Santos, was the vendee. Such fact is highly suspicious considering that accused Santos is the President of said company as shown in the PN, Contract to Sell, and other documents presented before the Court. Furthermore, the plate numbers in said DOS[55] do not jibe with the plate numbers in their Certificates of Registration[56] based on the engine or motor number of said buses as stated in the said DOS. Thus, the latter is apparently falsified.

***Second*, the deliberate non-recognition of the acquired buses in the financial statements (FS) as assets and the loans incurred, i.e, from Philippine Business Bank, AMA Rural Bank of Mandaluyong, Inc., RCBC Leasing & Finance Corporation, and Insular Bank, as liabilities is an indication of unlawful intent to hide the actual transaction.**

Accused Santos insisted in his judicial affidavit[57] that the buses were not assets of accused Kingsam during the year of its acquisition because it was not able to use said buses due to the absence of Certificate of Public Convenience which was only released on June 23, 2010, to wit:

> Q32. The prosecution alleges that Kingsam acquired seven (7) buses for the year 2008, and it was not reflected as assets in the Financial Statements of Kingsam Express Incorporation submitted for the years 2008 and even in 2009. What can you say about this?
>
> A32. All I know, ma'am, is that those buses which Kingsam purchased in 2008 and 2009 cannot be considered yet as Kingsam's assets because we were not able to use those buses until after the Certificate of Public

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[54] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-7-3, p. 1083.
[55] *Id.*
[56] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-10-1 to P-10-17, pp. 1085-1101.
[57] *Id.*, Exhibit A-53, pp. 1228-1229.

Convenience was released by the LTFRB in June 23, 2010. Also ma'am, during those years, Kingsam has not yet derived any benefit from the usage of those buses so we cannot say that those buses are assets yet of the company. I am not an accountant, ma'am so I really do not know whether those buses can be declared as assets in the financial statements and income returns of Kingsam. But I relayed all those transactions to the accountants and auditor that Kingsam hired, and relied mainly in their expertise on that matter.

Q33. How about, why it was not declared as liabilities?

A33. Because ma'am, the money that was partly paid for the purchase of those buses came from my wife's funds as her investment in Kingsam, and partly from the proceeds of the loans from various bank. Again, I am not an accountant, ma'am, so I really do not know how to treat those transactions in the financial documents of Kingsam. The accountants and auditor which Kingsam hired and who prepared the financial statements and income tax returns are more knowledgeable on these matters because they are experts on that field. I simply relied on their expertise, ma'am.

Q34. How about the reason why the acquisition by Kingsam Express Incorporation of eighteen (18) buses for the year 2009, was not reflected as assets in the Financial Statements of Kingsam Express Incorporation submitted for the year 2009?

A34. We started purchasing thoses (sic) buses for the year 2009 only in August 2009, ma'am, and started paying monthly amortization in September 2009. The payment for those buses in 2009 partly came from my wife's funds as her investment in Kingsam and party (sic) from the proceeds of the loans which we secured from various banks. During that time, we have not used those buses since we do not have the Certificate of Public Convenience yet issued by the LTFRB. That is why, I think we cannot consider it as an asset yet because we have not derived any benefit from it. Again, it is Kingsam's accountants and auditor who prepared our financial statements and income tax returns, who should know better because I mainly relied on their expertise.

Q35. How about the reason why those eighteen (18) buses were not declared as liabilities.

A35. For the same reason as earlier explained, ma'am. I left the discretion to the accountants and auditor that we hired since they are experts in the field of accountancy. *em*

Such assertion was also backed up and justified by accused Kingsam's accountant, Benigno M. Cubacub Jr., in his judicial affidavit, to wit:

> Q15. As an accountant, when should an asset be recognized as such in the financial document of a taxpayer?
>
> A15. Under the Philippine Accounting Standard ("PAS"), a financial instrument is recognized as financial assets of a company when the latter becomes a party to the instrument's contractual provisions. In cases where the purchase of those financial assets requires delivery within a certain time frame established by regulation or convention in the marketplace, then the financial assets are recognized on the trade date accounting or settlement date accounting. On the other hand, under the International Financial Reporting Standards ("IFRS") which the Philippines have also followed, a financial instrument is recognized as financial assets only if there is likely a future economic benefit from its use or sale.
>
> Q16. Can you explain to us the phrase "trade date accounting"?
>
> A16. Under trade date accounting, the financial asset and liability are recognized on the date the enterprise commits to the purchase.
>
> Q17. How about the phrase "settlement date accounting", can you please explain this to us?
>
> A17. Under settlement date accounting, the financial asset is recognized on the date it is delivered.
>
> Q18. Applying the principles that you just mentioned in the case of Kingsam Express Incorporation, can you recognize those buses acquired in 2009 as assets already?
>
> A18. Not yet, ma'am. Following the PAS, those buses should have been recognized as assets when Kingsam became a party to the contractual instrument for its acquisition and as of the settlement date of accounting. On the other hand, following IFRS, since Kingsam do not have any control yet on those buses because the ownership thereof were not yet transferred to Kingsam immediately after their acquisition in 2008 and 2009, and that it did not derive any economic benefit therefrom, then those buses cannot be considered yet as assets during the taxable years 2009. The same is true with respect to the acquisition of buses in 2008. *cm*

> Q19. On the other hand, when should a liability be recognized as such in the financial document of a taxpayer?
>
> A19 A financial instrument is recognized as a liability when there is a present obligation arising from the past events that needs to be settled, and the outflow of resources embodying economic benefits from the company is measured reliably or is probable.
>
> Q20. Applying what you just mentioned relative to the recognition of a financial instrument as a liability in the case of Kingsam Express Incorporation, can you recognize those buses acquired in 2009 as liabilities already?
>
> A20. No, ma'am. Since the buses acquired by Kingsam in 2009 were paid only starting in 2010 and some in 2011, then those buses cannot be recognized yet as liabilities in 2009. Based on the loan documents belatedly given to Mr. Santos, particularly the four (4) buses which he acquired from the Philippine International Bus, Inc. in 2009, Kingsam's payment of its loan instalment started only in 2011.

A scrutiny of the Contract to Sell[58] for the 4 buses reveals that there was no reservation nor any stipulation as to the retention or reservation of ownership by the seller, PIBI, but it merely stipulates the term of its payment by installment as shown above.

Article 1477 of the Civil Code of the Philippines provides that the ownership of the thing sold shall be transferred to the vendee (buyer) upon the actual or constructive delivery thereof. A notarized deed of sale is constitutive of constructive delivery.[59]

In the case of *Silvestre Dignos et al. v. Hon. Court of Appeals et al.*,[60] the Supreme Court ruled that even if the contract is designated as contract of a conditional sale, it is still a deed of absolute sale absent any stipulation or reservation as to the retention of ownership by the seller or vendor, to wit:

> Thus, it has been held that **a deed of sale is absolute in nature** although denominated as a "Deed of Conditional Sale" **where nowhere in the contract** in

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[58] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit A-34, p. 1413.
[59] Article 1498, Civil Code of the Philippines; *Villamar v. Mangaoil*, G.R. No. 188661 dated April 11, 2012; *Chua v. Court of Appeals*, 449 Phil. 25 (2003).
[60] G.R. No. L-59266, February 29, 1988.

> question is **a proviso or stipulation to the effect that title to the property sold is reserved in the vendor until full payment of the purchase price, nor is there a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period.**
>
> A careful examination of the contract shows that there is no such stipulation reserving the title of the property on the vendors nor does it give them the right to unilaterally rescind the contract upon non-payment of the balance thereof within a fixed period. (*Emphasis supplied*)

The difference between a contract of sale and a contract to sell was explained in the case of *Spouses Vicente and Lourdes Pingol v. Hon. Court of Appeals et al.*,[61] to wit:

> The decisive issue in this case is whether Exhibit "A" embodies a contract of sale or a contract to sell. The distinction between the two is important for in a contract of sale, the title passes to the vendee upon the delivery of the thing sold, whereas in a contract to sell, by agreement, ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded, whereas in a contract to sell, title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition, failure of which is not a breach but an event that prevented the obligation of the vendor to convey title from becoming effective.

Applying the abovementioned cases in the said contract to sell, such contract is definitely a contract of absolute sale, hence, ownership is transferred to accused Kingsam upon delivery of said buses which is the legal basis of the accused to include it in its FS and books of accounts.

These buses should be part of accused Kingsam's Property, Plant, and Equipment (PPE) Account in its FS. Pursuant to International Accounting Standard (IAS) No. 16 relative to accounting for PPE, it should be recognized as assets: (1) When it is probable that the future economic benefits associated with the asset will flow to the entity; and (2) the cost

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[61] G.R. No. 102909, September 6, 1993.

of the asset can be measured reliably. As shown above, these requisites have been satisfied in the 2008 transactions. However, accused still failed to recognize these assets in its books.

***Lastly*, there is intentional hiding of the actual transaction of such acquisition from the authorities.**

If the assertion and justification by accused Santos and Kingsam's accountant will be followed, the recognition of said assets and liabilities in accused Kingsam's FS should have been reflected in the FS for the ending period of 2010 or 2011 when Kingsam's certificate of public convenience was issued or payments were being made, respectively. But none of that reporting was made. As shown in the following balances for PPE Accounts and Liability Accounts in the FS of accused Kingsam for calendar years 2008 to 2012, such transactions were not reflected at all, to wit:

Ending period	PPE Account	Liability Account
2008[62]	2,110,800.00	2,328,028.35
2009[63]	1,872,000.00	2,194,391.00
2010[64]	4,509,870.00	4,855,573.00
2011[65]	3,947,740.00	3,909,061.00
2012[66]	3,391,012.22	3,063,376.06

Based on the loan documents, the acquisition of 7 buses in 2008 alone had a cost of Php32,800,000.00, which is far higher than the balances as shown in the above table. Also contrasted with the acquisition cost thereof in the Deeds of Absolute Sale, there is a marked difference of Php19,150,000.00.

The accused had really no intention to disclose the actual transaction in its FS because if accused Santos and his accountant were truthful in their testimony, the balances in the year 2010 to 2012 should have already contained the additional

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[62] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-5, p. 1065.
[63] *Id.*, Exhibit P-6-4, p. 1035.
[64] *Id.*, Exhibit P-6-3. p. 1016.
[65] *Id.*, Exhibit P-6-2. p. 992.
[66] *Id.*, Exhibit P-6-1, p.

buses in the PPE account of accused Kingsam and the corresponding loan amounts in the liability account.

What then is the end to be achieved by the accused in hiding said transaction?

To recapitulate, there were down payments made by the accused in the acquisition of 3 and 4 Kinglong buses in 2008 amounting to 5,040,000.00, 400,000.00, and 2,080,000.00, respectively. Further, there were 3 Hyundai buses (with Plate Nos. TXX963, TXX945, and TXX813) acquired in 2009 which were not purchased through financing or loans.

Accused failed to explain the source of the said down payments. The PN and other loan documents for said acquisitions which were submitted during the trial showed that these down payments for the purchase of the buses were not included in the amount of loans granted to the accused.

It is basic knowledge that down payment usually involves an outright outlay of cash or any asset which belongs to the buyer as part of the payment of the consideration or price of the purchase or acquisition.

The absence of an explanation from accused Santos as to the source of said down payments for the acquired 7 Kinglong buses which could come either from the asset or income of the corporation and which was not disclosed by accused Kingsam in its FS deserves close scrutiny.

The non-disclosure of the down payment as well as the non-recording of the actual transaction in the financial documents or book of accounts of accused Kingsam had effectively enabled the latter to evade any tax assessment that may arise from the said transaction. Thus, the underlying intent of the accused corporation deducible from such inaction or deliberate failure to disclose is to purposely evade the accompanying tax that could arise from such undeclared income or asset.

It should be noted that accused Kingsam is a corporate entity and a juridical person while accused Santos is the President of said corporation. In the instant case, said accused were charged under Section 254 of the 1997 NIRC as amended, of tax evasion for taxable year 2008, the provision of which is quoted below:

> 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 not less than Thirty thousand (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*)

Further, Sections 52(A) and 253(d) of the 1997 NIRC, as amended, indicate the persons who should be responsible to file and pay the required internal revenue taxes, and the persons who shall be liable for the failure to file and pay said internal revenue taxes, respectively, to wit:

> SEC. 52. *Corporation Returns.* -
>
> (A) Requirements. - **Every corporation subject to the tax herein imposed**, except foreign corporations not engaged in trade or business in the Philippines, **shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return** in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer** and by the treasurer or assistant treasurer.
>
> xx xxx
>
> SEC. 253. *General Provisions.* -
>
> (a) xxx xxx
>
> (b) xxx xxx
>
> (c) xxx xxx
>
> (d) In the case of associations, partnerships or corporations, **the penalty shall be imposed on the** partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.
>
> (e) xxx xxx

(*Emphasis supplied*)

Thus, the elements of such offense are the following:

1. Offender is required to pay the tax imposed under NIRC;
2. Offender attempts in any manner to evade or defeat any tax imposed, or the payment thereof;
3. The attempt to evade or defeat any tax imposed, or the payment thereof was willful; and
4. In case the offender is a corporate taxpayer, the accused is its responsible officer.

Based on the evidence adduced, all the abovementioned elements are present in the instant case as discussed below.

On the first element, it was established by the records of the case that accused Kingsam is a domestic corporation, duly organized and incorporated,[67] which is required under the law, rules and regulations to file the ITR indicating therein the true and accurate information as to its receipts or income, expenses and other relevant information for the purpose of payment of proper taxes to the government and accordingly, the payment of said internal revenue taxes.

Highly cognizable also is the fact that accused Kingsam had only an authorized capital stock of Php1,000,000.00, 25% of which was subscribed and accused Santos owns Php124,900.00 or a 12.49% interest in the said corporation while his wife, Maritess F. Santos, owns Php124,800.00 or a 12.49% interest.[68] Thus, accused Santos had a direct and indirect interest of almost all the subscribed capital stock.

Accused Santos, who admitted in open court as well as represented himself in the PN, Contract to Sell, and other loan documents as the President of accused Kingsam[69], filed the ITR for the taxable year 2008[70] on February 5, 2009. Without a doubt, the first requisite exists.

As to the second element, the facts of the case, based on the evidence, evince that accused Kingsam through the action

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[67] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-3, pp. 946-955.
[68] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-2, pp. 936-945.
[69] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit A-53, Judicial Affidavit of Samuel S. Santos, A3, p. 1219.
[70] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-5, pp. 1059-1061.

of accused Santos hid the actual transactions from the government authorities particularly as to the down payment made to PIBI in 2008 acquisition amounting to Php7,520,000.00.

The amount of Php7,520,000.00 down payment to the said buses should have been reported in accused Kingsam's 2008 income tax return (ITR) and the corresponding income tax should have been paid. Furthermore, such amount was not covered by the loan from the banks, hence, their source is highly questionable.

Based on the Expenditure Method, which is being forwarded by the public complainants of these cases, if the subject taxpayer's expenditures during a given year exceed his reported income, and the source of the funds used to make the expenditures is unexplained, it may be inferred that such expenditures represent unreported income. The expenditure method of proof formula is as follows:[71]

Expenditure	**(Money Spent or Applied)**
Less:	Non-Taxable Sources of Funds
Equals:	**Corrected Adjusted Gross Income**
Less:	Itemized/Standard Deduction Personal Exemptions
Equals	**Corrected Taxable Income**
Less:	Reported Taxable Income
Equals:	**Additional Taxable Income** (Unreported Income)

This audit procedure, namely, Expenditure Method, that was adopted by the public prosecutor finds support in **Section 6 (B) of the NIRC** which authorizes the CIR to assess the proper tax based on the best evidence available. Said section provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* – xxx (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming or when there is reason to believe that any such report is false, incomplete or

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[71] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-1-2, p. 925.

> erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable."

To implement the foregoing provision, the BIR issued **Revenue Memorandum Circular (RMC) No. 23-2000** entitled "**Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the 'Best Evidence Obtainable'**" to guide its revenue examiners in the conduct of tax audit of taxpayers without or lacking in accounting records and other relevant documents pertaining to the taxes paid.

Based on this circular, this Court finds the application of the Networth Method of Investigation corroborative of the Expenditure Method utilized by the prosecutors, as falling in all fours to the case at hand, when the accused failed to declare those buses and the alleged loans taken up to acquire those assets in their FS, books of account and income tax returns. The application of this audit procedure in tax investigation was aptly upheld by the Supreme Court in the case of *William Li Yao v Collector of Internal Revenue*[72] which we hereinafter quote, as follows:

> "In the case at bar, the existence of assets or properties appearing in the name of the taxpayer without the taxpayer being able to give a definite reasonable explanation for their existence, justifies the Court of Tax Appeals and this Court to resort to the inventory method of assessment, such being necessary and at the same time just and equitable."[73]

In the instant case, the ITR[74] for taxable year 2008 showed only the amount of Php1,212,772.89 as its total sales/revenue or receipts which is more or less 620% understated compared with the down payment of Php7,520,000.00 made for the 7 Kinglong buses in the said year. Thus, the income tax paid was not commensurate to the actual income earned by the accused since the Php7,520,000.00 down payment which is deemed as unreported income is not included in its total income earned for the said taxable year. This is a clear case of substantial under-declaration.

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[72] G.R. No. L-11875, December 28, 1963.

[73] *Ibid*; This *Yao* ruling has also been adopted in three cases: *Perez vs Collector*, G.R. No. L-10507, May 30, 1958; *Collector vs. Reyes*, G.R. Nos. L-115534 and L-11558, Nov. 25, 1958; and *Avelino vs. Collector*, G.R. No. L-17715, July 31, 1963.

[74] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-5, p. 1059.

Section 248(B) of the 1997 NIRC, as amended, states that such unreported or undeclared income constitutes substantial under-declaration and prima facie evidence of a fraudulent return, to wit:

> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial **under-declaration of taxable sales, receipts or income**, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute prima facie evidence of a false or fraudulent return**: Provided, further, That failure to report sales, receipts or income in **an amount exceeding thirty percent (30%) of that declared per return**, and a claim of deductions in an amount exceeding (30%) of actual deductions, **shall render the taxpayer liable for substantial under-declaration of sales, receipts or income** or for overstatement of deductions, as mentioned herein. (*Emphasis supplied*)

If not for the investigation made by the Bureau of Internal Revenue (BIR) and the subsequent filing of the instant case, the actual transaction could have not been known. Hence, the second element of evading or defeating payment of any tax imposed is satisfied.

As to the third and fourth elements, the knowledge and action of accused Santos as President of Kingsam on said actual transactions indicate willfulness and deliberate attempt to evade payment of income tax on said down payments.

Accused Santos' admission of falsifying the Deeds of Sale for 2008 acquisition of buses which were submitted to LTO, the deliberate non-recognition of said acquisition in accused Kingsam's FS as well as in its books of accounts,[75] and the intentional hiding and non-reporting of the actual transactions to the proper authorities such as LTO and BIR are all indicia of

[75] Docket, CTA Crim. Case No. O-522, Vol. III, Judicial Affidavit of Samuel S. Santos, Exhibit A-53, pp. 1228-1229.

unlawful acts which were resorted to in order to evade the payment of a higher income tax.

In the case of *Jose Aznar v. Court of Tax Appeals et al.*,[76] the Supreme Court explains the willful and deliberate action of the offender that resulted in fraud, to wit:

> ...The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong-doing with the sole object of avoiding the tax...

The abovementioned action resorted to by accused Santos was a deception that is indicative of willful and deliberate intent to hide the actual transaction particularly on the down payment made for 2008 acquisition of buses and eventually to evade the corresponding income tax due on such undeclared income.

Without an iota of doubt, the knowledge and actual participation of accused Santos in hiding the down payments for 2008 acquisition satisfies the third and fourth elements.

Therefore, there is proof beyond reasonable doubt that accused Kingsam and Samuel S. Santos had committed the offense of tax evasion under Section 254 of the 1997 NIRC, as amended, for taxable year 2008, as charged in CTA Crim. Case No. O-522.

In CTA Crim. Case No. O-554, accused Kingsam and Samuel S. Santos were charged under Section 255 of the 1997 NIRC, as amended or failure to supply correct and accurate information for taxable year 2008, the provision is quoted below:

> 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**

[76] G.R. No. L-20569, August 23, 1974.

> **accurate information, who willfully fails to** pay such tax, make such return, keep such record, or **supply correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)

Relative to the abovementioned provision, Sections 52(A) and 253(d) of the 1997 NIRC, as amended, which are previously quoted, indicate the person who should be responsible to declare such correct and accurate information, and the person who shall be liable for such failure to provide correct and accurate information.

The following, therefore, are the requisites for the said offense to be considered committed or consummated, to wit:

1. The offender is required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct and accurate information;
2. The offender fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;
3. Such failure was willful; and
4. In case the offender is a corporate taxpayer, the accused is its responsible officer.

On the first requisite, it is undisputed that accused Kingsam is a domestic corporation. duly organized and incorporated,[77] which is required under the law, rules and regulations to file the ITR indicating therein the correct and accurate information as to its receipts or income, expenses and other relevant information for purpose of payment of proper taxes to the government. *om*

[77] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-3, pp. 946-955.

Accused Santos, who admitted in open court as President of said corporation,[78] filed the ITR for the taxable year 2008[79] on February 5, 2009. Without a doubt, the first requisite exists.

As to the second requisite, the down payments amounting to Php7,520,000.00 for the acquisition of Kinglong buses in 2008 made by accused Kingsam to PIBI constitute an undeclared income based on the Expenditure Method. Said method is based on a theory that if the subject taxpayer's expenditures during a given year exceed his reported income, and the source of the funds used to make the expenditures is unexplained, it may be inferred that such expenditures represent unreported income. The failure by the accused to explain the source of such down payments renders the same as undeclared income.

The accused failed to indicate such downpayments in the ITR for taxable year 2008[80] which was filed on February 5, 2009. The total sales/revenue or receipts showed only the amount of Php1,212,772.89 which was far lower than the said undeclared income. The absence of such information in the ITR for taxable year 2008 is proof that accused failed to supply correct and accurate information as to its sales/revenue or receipts. Hence, the second requisite was complied.

As to the third and fourth requisites, the admission of accused Santos of falsifying the Deeds of Sale for 2008 acquisition of buses submitted to LTO, the deliberate non-recognition of said acquisition in accused Kingsam's FS as well as in its books of accounts, and the intentional hiding and non-reporting of the actual transactions to the proper authorities such as LTO and BIR are all indication of unlawful acts which were resorted to by the accused in order to evade the payment of a higher income tax.

The abovementioned action resorted to by accused Santos was a deception that is indicative of a willful and deliberate intent to hide the actual transaction particularly the down payments made for 2008 acquisition and eventually to evade

[78] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit A-53, Judicial Affidavit of Samuel S. Santos, A3, p. 1219.
[79] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-5, pp. 1059-1061.
[80] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-5, p. 1059.

the corresponding income tax for such undeclared income from authorities such as BIR and LTO.

Thus, the result of said actions is the failure of the accused corporation to supply the correct and accurate information as to its sales/revenue or receipts. Thus, it satisfies the third and fourth requisites of the said offense.

Such first hand knowledge and actual participation of accused Kingsam through accused Santos, as shown by the evidence presented, in its attempt to hide the down payments for the acquisition of the 7 Kinglong buses which should have been reported as income in its ITR for taxable year 2008 is proof beyond reasonable doubt that the accused committed or consummated the acts punishable under Section 255 of the 1997 NIRC, as amended, as charged in CTA Crim. Case No. O-554.

CTA Crim. Case Nos. O-525 & 523

In CTA Crim. Case Nos. O-525 & 523, said accused were also charged under Section 254 (tax evasion) and 255 (failure to supply correct and accurate information), respectively, of the 1997 NIRC as amended, for taxable year 2009.

In CTA Crim. Case No. O-525, the first, third, and fourth elements of the offense are proven to have existed as shown in the discussion above.

On the second element, the Deed of Sale dated October 12 2009,[81] alone for the 12 buses acquired in 2009 shows an acquisition cost of Php24,000,000.00 while the amount of loan taken from RCBC Leasing & Finance Corporation on August 20, 2009 and October 12, 2009 only has a total amount of Php13,440,000.00. Thus, there is a balance of Php10,560,000.00 which the other loans in 2009 could have not funded since they were beyond the date of the Deed of Sale. If the defense of the accused that said amount was taken from those loans, such fact is highly doubtful since the Deed of Sale did not provide for a staggered payment of the purchase price.

In the ordinary course of business of lending, a bank or a financial institution will grant the loan if the borrower has a

[81] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-7-3, p. 1083.

corresponding collateral that may answer the loanable amount. However, in the case of accused Kingsam, it only has Php1,000,000.00 in authorized capital stock and its subscribed capital stock amounts only to Php250,000.00.[82] Hence, it cannot guaranty with its assets the loanable amount of Php10,560,000.00

The only deducible conclusion from such facts is that the balance of Php10,560,000.00 came from the income or asset of accused Kingsam. Such amount is considered unreported income based on the Expenditure Method as discussed above and it must be declared in the ITR and the corresponding tax payable should be paid.

In its 2010 ITR for taxable year 2009 which was filed and paid on August 15, 2010,[83] the total sales or revenue declared amounts only to Php1,623,734.60 and compared to the amount of unreported income, it is more or less 650% understated. It, therefore, satisfies the second element of Section 254 on tax evasion.

The existence of all the elements shows that there is proof beyond reasonable doubt that accused Kingsam through accused Samuel S. Santos committed tax evasion as charged in CTA Crim. Case No. O-525.

In CTA Crim. Case No. O-523, the first, third, and fourth elements of the offense are also proven to have existed as shown in the discussion above.

As to the second element, there was a Php10,560,000.00 unreported income for taxable year 2009 based on the Expenditure Method. However, the amount was not declared in the ITR for taxable year 2009 which was filed and paid in 2010. The accused has the obligation to declare such amount but it failed to do so. Hence, without a doubt the second element existed.

There is, therefore, proof beyond reasonable doubt that the offense under Section 255 of 1997 NIRC, as amended, is

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[82] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-2, p. 941.
[83] Docket, CTA Crim. Case No. O-522, Vol. III, Exhibit P-6-4, p. 1029

committed by accused Kingsam through its President, accused Samuel S. Santos as charged in CTA Crim. Case No. O-523.

As to the civil liability, however, the prosecution failed to prove that the payment of the taxes subject of the criminal case was finally decided by the Commissioner.

Section 205(b) of the NIRC, as amended, provides the requisites for the award of civil liability in criminal case, to wit:

> **SEC. 205. Remedies for the Collection of Delinquent Taxes.** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) xxx xxx; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
>
> 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**.
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon. (*Emphasis and underscoring supplied*)

The prosecution did not adduce any evidence that will show a final assessment which had been finally decided by the Commissioner. The abovementioned provision requires that in order to be included in the judgment of said civil liability, it must be the final decision of the Commissioner of Internal Revenue. Thus, it refers to a formal assessment. In *Adamson v. Court of Appeals*[84], the Supreme Court intimated the requisites of formal assessment, *viz*:

> We rule that the recommendation letter of the Commissioner cannot be considered a formal

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[84] G.R. Nos. 120935 & 124557, May 21, 2009.

assessment. Even a cursory perusal of the said letter would reveal three key points:

1. It was not addressed to the taxpayers.
2. There was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein.
3. The letter was never mailed or sent to the taxpayers by the Commissioner.

Thus, applying the abovementioned case, a formal assessment should be: (1) addressed to the taxpayer; (2) contained a demand on the taxpayer to pay the tax liability and must set a period for payment; and (3) mailed or sent to the taxpayer by the Commissioner. However, the prosecution failed to adduce the same.

WHEREFORE, premises considered, the Court rules as follows:

1. In CTA Crim. Case No. O-522, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2008 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

2. In CTA Crim. Case No. O-523, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2009 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

3. In CTA Crim. Case No. O-525, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND**

REASONABLE DOUBT of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2009 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

4. In CTA Crim. Case No. O-554, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2008 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

In addition, **KINGSAM EXPRESS INCORPORATION** is further **ORDERED TO PAY** the following fines pursuant to Section 256 of the NIRC of 1997, as amended:

1. In CTA Crim. Case No. O-522, a fine of **ONE HUNDRED THOUSAND PESOS (Php100,000.00)** for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2008;

2. In CTA Crim. Case No. O-523, a fine of **ONE HUNDRED THOUSAND PESOS (Php100,000.00)** for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2009;

3. In CTA Crim. Case No. O-525, a fine of **ONE HUNDRED THOUSAND PESOS (Php100,000.00)** for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2009; and

4. In CTA Crim. Case No. O-554, a fine of **ONE HUNDRED THOUSAND PESOS (Php100,000.00)** for being found

GUILTY BEYOND REASONABLE DOUBT of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2008.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused.

CTA Crim. Case Nos. O-522, O-523, O-525 & O-554

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *J.J.*

Promulgated:

MAR 12 2018 9:30 am

x- -x

DISSENTING OPINION

CASANOVA, *J*.:

This is a prosecution for violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, wherein the accused Samuel S. Santos pleaded not guilty upon being arraigned on the following Informations:

Crim. Case No. O-522
(Amended Information)

"In the Amended Information, the above-named accused is being charged for violation of section 254 of the National Internal Revenue Code, as amended, allegedly committed as follows:

'That on or about the 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused KingSam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially underdeclare the corporation's income for taxable year 2008, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the amount of Four Million Ninety Five Thousand Pesos (Php4,095,000.00) exclusive of surcharge and interest, as of the time of the filing of the complaint, to the damage and prejudice of the government.

CONTRARY TO LAW."[1]

Crim. Case No. O-523
(Amended Information)

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses King Sam Express Incorporation and Samuel S. Santos in his capacity as President of the corporation, of the offense of violation of Section 255 of Republic Act No. 8424 (National Internal Revenue Code of 1997), as amended, committed as follows:

'That on or about the 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php1,623,734.60 only, when, in truth and in fact, Kingsam Expresss, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporations *(sic)* true and correct income for taxable year 2009, to the damage

[1] Per Resolution dated November 25, 2015, CTA Crim. Case No. 0-522, Docket (II), p. 512.

and prejudice of the government in the estimated amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.

CONTRARY TO LAW."[2]

Crim. Case No. O-525
(Amended Information)

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses King Sam (sic) Express Incorporation and Samuel S. Santos in his capacity as President of the corporation, of the offense of violation of Section 254 of Republic Act No. 8424 (National Internal Revenue Code of 1997), as amended, committed as follows:

'That on or about the 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused King Sam (sic) Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income tax in the amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest, as of the filing of the complaint, to the damage and prejudice of the government.

CONTRARY TO LAW."[3]

Crim. Case No. O-554

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **KINGSAM EXPRESS INCORPORATION AND SAMUEL S. SANTOS** in his capacity a

[2] Per Resolution dated December 9, 2015, CTA Crim. Case No. 0-523, Docket, pp. 291-292.
[3] Per Resolution dated December 9, 2015, CTA Crim. Case No. 0-523, Docket, pp. 292-293.

as President of the corporation, of the offense of violation of Section 255 of Republic Act No. 8424 (National Internal Revenue Code of 1997), as amended, committed as follows:

> 'That on or about the 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2008 by making it appear that the corporation's income/revenue for taxable year 2008 was in the amount of Php1,212,773.00 only, when in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php13,650,000.00, and failing to declare or report the same during said taxable year, thus, concealing the corporation's true and correct income for taxable year 2008, to the damage and prejudice of the government in the amount of Four Million Ninety Five Thousand Pesos (Php4,095,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.
>
> CONTRARY TO LAW."[4]

KINGSAM EXPRESS INCORPORATION ("Kingsam" for brevity) is also pleaded as Accused in the above Informations.

Notably, evidence for the prosecution was furnished by Mr. Medardo L. Tipon only. In his testimony, he stated that he is currently employed as Revenue Officer I in the Bureau of Internal Revenue since 1991 and is presently assigned at the Revenue District Office (RDO) No. 24-Valenzuela City. He is tasked to conduct the audit investigation of all internal revenue taxes for tax cases assigned to him and to perform other related functions as may be assigned to him from time to time. a

[4] Per Resolution dated June 2, 2016, CTA Crim. Case No. 0-554, Docket, pp. 261-262.

He was one of the revenue officers who conducted the preliminary investigation on Kingsam. He mentioned that he executed, together with other two revenue officers: Manolita Dimacali and Jose Sanga, the Joint Complaint Affidavit and Joint Reply Affidavit filed against Kingsam and Samuel S. Santos.

Mr. Tipon stated that he conducted the preliminary investigation against the accused in this wise: (i) that he checked the registration status of Kingsam with RDO No. 24-Valenzuela; (ii) that he accessed Kingsam's Annual Income Tax Returns (AITR) and Financial Statements (FS) for taxable years 2008-2012; (iii) that he checked its registration with the Securities and Exchange Commission (SEC); and, (iv) that he checked Kingsam's records with the Land Transportation Office (LTO).

He obtained the following documents from the SEC: Kingsam's 2009 General Information Sheet, Articles of Incorporation and Certificate of Filing Amended Articles of Incorporation. In RDO No. 24-Valenzuela, he got hold of the following: Certificate of Registration, Annual Income Tax Returns with Financial Statements for the taxable years 2008-2012. In LTO, he was able to obtain copies of Certificates of Registration under the name of Kingsam and Deeds of Sale, whereby Kingsam was the buyer of the subject buses.

On the premise that the amount of P49,650,000.00 was the undeclared revenue of Kingsam for taxable years 2008 and 2009, Mr. Tipon concluded that Kingsam failed to supply correct and accurate information when it did not reflect in its AITRs and FS for the subject taxable periods the acquisition cost of the buses acquired during the same years. As a consequence, Kingsam was, accordingly, able to evade payment of income tax in the amount of P9,828,000,00 for taxable year 2008; and the amount of P23,760,000 for taxable year 2009.

Testifying in his defense, accused Samuel S. Santos states that he is the same person being charged in this case, in his official capacity as the President of Kingsam Express Incorporation.

He mentioned that the Letter of Authority (LOA) dated October 22, 2013 was only served to Kingsman's Clerk, Mr. Deney Rodillas, on October 23, 2013. Accordingly, the said personnel was not authorized to receive any documents for and on behalf of Kingsam.

One day after the service thereof, the BIR immediately filed a Complaint against him and the company before the Department of Justice, which accordingly, violated his right against due process of law.

He testified that, if the BIR just gave them the opportunity and sufficient time to respond and comply with the LOA, they could have presented their financial documents, and could have shown to the BIR that there was no willful intent on their part to evade or defeat payment of any taxes.

In proving that acquisition of three (3) buses (with Engine Nos. FE6TC-003941H, FE6TC-003944H and FE6TC-003957H) in 2008 came from the proceeds of loan, Mr. Santos presented the Promissory Note with Chattel Mortgage executed with Philippine Business Bank.

He also claimed that the company used his wife's funds and proceeds of loans in purchasing the four (4) buses (with Engine No. FE6TC-003885H, FE6TC-003882H, FE6TC-003896H, and FE6TC-003881H) in 2008, from Mr. Elison Tan. He also mentioned that Mr. Tan agreed with the arrangement that he will only be paid after Kingsam has been granted a Certificate of Public Convenience. Thus, he started paying Mr. Tan only in March 2011.

To prove that the said buses came from bank financing, Mr. Santos presented Contracts to Sell with Philippine International Bus, Inc. Accordingly, the Statement of Account issued by the latter will show that Kingsam started paying the purchase price only in March 2011. The same four (4) buses were also the subject of a Deed of Sale executed on June 16, 2008.

He added that the Certificates of Registration of those buses will prove that the same were encumbered.

Mr. Santos claimed that there was no fraudulent and willful act of under declaration of any sales in 2008 since the money used in purchasing said buses came partly from his wife's fund and from the proceeds of loan. Likewise, there was no attempt to evade and defeat the payment of any taxes on their part since he made a voluntary payment of Kingsam's tax liabilities after the BIR filed a complaint against him and Kingsam, and while the case is pending before the CTA. Accordingly, he even requested for a reinvestigation on December 12, 2013, and requested to proceed with audit examination.

Mr. Santos also stressed that there was no under declaration of sales in 2009 since the money used in purchasing eighteen (18) buses, amounting to P36,000,000.00, likewise, came partly from his wife and loan proceeds released by various banks.

To prove the foregoing, Mr. Santos presented the following documents: Certification from AMA Bank showing that Kingsam has secured a total of seventeen (17) loans starting 2009; Certifications from RCBC Leasing showing that Kingsam has secured three (3) loans in 2009 and 2010; and two (2) Statement of Accounts from Malayan Leasing and Finance Corporation showing that two (2) promissory notes were obtained on August 20, 2009 and October 12, 2009, respectively; and Promissory Note with Chattel Mortgage with Insular Bank showing that Kingsam obtained a loan for its two (2) buses with Insular Bank on December 16, 2009; Letter from Orix Metro Leasing and Finance Corporation advising that Kingsam availed of its loan facility for the purchase of two (2) units of buses, including the original Promissory Note with Chattel Mortgage Authority to Pay, Undertaking, Continuing Surety and Acknowledgement Receipt; Certificates of Registration showing that the buses purchased in 2009 were all encumbered. He also presented several checks issued by his wife.

He said that the reason why the said acquisition costs of the said buses were not reflected as Kingsam's assets in its 2008 and 2009 Financial Statements was due to the fact that they were not able to use the same until after the issuance Certificate of Public Convenience by the LTFRB on June 23, 2010.

The acquisition costs of the said buses were, likewise, not declared as liabilities because the money used in purchasing the same came from his wife's funds, as her investment in Kingsam, and partly from the proceeds of the loans taken from various banks.

He also testified that while this case is pending before the CTA, he voluntarily made payment of Kingsam's tax liabilities in the amount of P1,546,000.00, including payment of compromise penalty. Accordingly, the said amount was based on the recommendation of Ms. Manolita Dimacali, who re-assessed Kingsam's tax liabities. To prove such fact, he presented Payment Forms for taxable year 2008 in the respective amounts of P2,000.00, P357,000.00, P37,000.00 and P25,000.00. He also presented the corresponding confirmation receipts and BIR-Deposit/Payment Slips. He also presented the Payment Forms for taxable year 2009 in the respective amounts of P1,004,000.00, P6,000.00, P90,000.00 and P25,000.00, as well as their corresponding confirmation receipts and BIR-BIR Deposit/Payment Slips.

Another witness for the defense, Mr. Benigno M. Cubacub, Jr. says that that his accounting firm, Jeodimel Octaviano Coronado, prepared Kingsam's Audited Financial Statement and Income Tax Return for taxable year 2009. He opined that the accused did not attempt to evade or defeat any payment of taxes by substantially under declaring it income for taxable years 2008 and 2009 since the BIR did not give the accused the opportunity to present its books of accounts and other documents for said years. He also stated that the BIR merely assumed that Kingsam was able to acquire several buses in 2008 and 2009 on cash basis, and that the BIR did not see that the money used in purchasing buses came from loans obtained from different financial institutions.

Mr. Cubacub also stated that after the BIR filed a complaint against the accused, and while the case is already being heard before the CTA, accused Santos got hold of the copies of several loan documents, which were not turned over to them when they prepared the AFS and AITR of Kingsam in 2009. He also thinks that the same goes when the AFS and ITR for 2008 were being prepared for and on behalf of Kingsam.

In claiming that the accused cannot be held liable under Section 255 of the 1997 NIRC, he testified as follows:

> "x x x As mentioned earlier, at the time that our accounting firm prepared the AFS and ITR for and on behalf of Kingsam for the taxable period of 2009, there were no documents available yet, either in our possessions or Mr. Santos' possession that could support the acquisition of Kingsam's buses in 2008 and 2009. The buses were not even delivered to Kingsam in those years, to my knowledge, and the ownership thereon was not yet transferred to Kingsam based on the Certificate of Registration available in the LTO. In addition, Kingsam did not derive any economic benefit from the acquisition of those buses in 2008 and 2009 since it cannot use and operate those buses on the streets due to lack of Certificate of Public Convenience from the LTFRB. As such, there is no basis for the declaration of those buses in Kingsam's AFS and ITR for the year 2009 either as an asset or liability. Consequently, it was an error for the BIR to assume that Kingsam or Mr. Santos willfully failed to supply correct and accurate information in its ITR for the year 2009. The same is true with respect to 2008, even though it is not our accounting firm that prepared the AFS and ITR for 2008."

He also stated that under the Philippine Accounting Standard, a financial instrument is recognized as financial assets of a company when the latter becomes a party to the instrument's contractual provisions. In cases where the purchase of those financial assets require delivery within a certain time frame established by regulation or convention in the market place, then the financial assets are recognized on the trade date accounting or settlement date accounting. Thus, those buses should accordingly have been recognized as assets when Kingsam became a party to the contractual instrument for its acquisition and as of the settlement date of accounting.

He further stated that under the International Financial Reporting Standards, a financial instrument is recognized as financial assets only if there is likely a future economic benefit from its use or sale. Thus, Mr. Cubacub opined that, since Kingsam did not have any control yet on those buses because the ownership thereof were not yet transferred to Kingsam immediately after their acquisition in 2008 and 2009, and that it did not derive any economic benefit therefrom, then those buses cannot be considered yet as assets during the taxable years 2009. The same is true with respect to the acquisition of buses in 2008.

He also explained that the liability shall only be recognized in the financial document when there is already a present obligation arising from the past events that needs to be settled, and that the outflow of resources embodying economic benefits from the company is measured reliably. Consequently, he opined that the buses acquired in 2009 cannot yet be recognized as liabilities in 2009 since the same were paid only in 2010 and sometime in 2011.

He also stated that even the buses acquired in 2008 cannot be considered yet as liability on the ground that the ownership thereon were not yet transferred to Kingsam, and the latter did not derive any economic benefit due to lack of Certificate of Public Convenience from the LTFRB, which was granted only in 2010.

After analyzing carefully all the evidence on record, both testimonial and documentary, the undersigned finds that the evidence adduced by the prosecution were insufficient to prove the guilt of the accused beyond reasonable doubt.

Numerous circumstances gave the undersigned reasons to doubt the truthfulness of the accusation.

First, there is no dispute that a criminal case can be filed before the Court even without the accused being assessed by the Revenue Officers or a criminal case can proceed even if the Administrative Protest is still on-going. **However, in case the amount of tax deficiency is alleged in the Information, the same must be accurate and true, for**

<u>the amount being claimed plays an important role</u>. The amount claimed determines which Court has jurisdiction over the case. Accordingly, the amount must not be based on PRESUMPTIONS OR ESTIMATES, like in the instant cases for **it will give undue power to the complainants to select the court** they feel will be in their favor. This fact holds true in the advent of the law creating the Court of Tax Appeals, Republic Act No. 1125, as amended by Republic Act No. 9282, otherwise known as "The Expanded Jurisdiction of the Court of Tax Appeals". Sec. 7(b)(1) of said law specifically provides as follows:

> "**Sec. 7. JURISDICTION** – The CTA shall exercise:
>
> a) x x x
>
> b) Jurisdiction over cases involving Criminal Offenses as herein provided:
>
> 1) Exclusive Original Jurisdiction over all criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties claimed is less that One Million Pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of the civil liability for taxes and penalties shall at all times be simultaneously instituted with and jointly determined in the same proceedings by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

From the above, it is crystal clear that before a taxpayer can be prosecuted for criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), the **principal**

amount of taxes being claimed as **alleged** in the Information should only either be **definite** or **no specified amount at all at the time of the filing of the case** in Court. This is so because it determines the jurisdiction of the Court. In case the claim is One Million Pesos (P1,000,000.00), or more, the CTA has exclusive original jurisdiction over the case. On the other hand, if the claim is less than One Million Pesos (P1,000,000.00), or where no specified amount is claimed, the cases shall be tried before the regular courts and the jurisdiction of the CTA shall be appellate.

In addition, the amount of tax deficiency being claimed in the Information does not only determine the jurisdiction of the Court, but also become one of the elements of the crime that must be proven beyond reasonable doubt which the prosecution failed in the instant cases since the amount alleged in the Informations were all PRESUMPTIONS OR ESTIMATES. To prove the same, no assessment has been made by the BIR at the time of the filing of these cases at the Department of Justice. In fact, the lone prosecution witness, Mr. Medardo Tipon, admitted in Court that the Letter of Authority was served to accused's company the day before the cases were filed. He admitted too that while the cases were still pending in court, there is an ongoing preliminary investigation being conducted at the BIR to determine the underdeclared income of the accused for the years 2008 and 2009. Question? Where did they get the amount of tax deficiency that they alleged in the Informations — if not thru PRESUMPTIONS AND ESTIMATES.

Second, there are reasons to believe that the Constitutional Right of the accused to DUE PROCESS was violated at the time the case was filed before this Court.

Section 14(1), Article III of the Bill of Rights of our Constitution state that, "*no person shall be held to answer for a criminal offense without due process of law*".

As applied to criminal trial, denial of due process is the failure to observed that fundamental fairness essential to the very concept of justice, and in order to declare a denial of it, we must find that the absence of fairness fatally injected in the trial, and that the acts complained of must be of such quality as necessarily prevent a fair trial[5].

It is basic that, in the collection of the BIR deficiency tax, the total correct income of the accused for the taxable years 2008 and 2009 a

[5] Lisenba vs. California, 314 U.S. 219.

amount of taxes being claimed as **alleged** in the Information should only either be **definite** or **no specified amount at all at the time of the filing of the case** in Court. This is so because it determines the jurisdiction of the Court. In case the claim is One Million Pesos (P1,000,000.00), or more, the CTA has exclusive original jurisdiction over the case. On the other hand, if the claim is less than One Million Pesos (P1,000,000.00), or where no specified amount is claimed, the cases shall be tried before the regular courts and the jurisdiction of the CTA shall be appellate.

In addition, the amount of tax deficiency being claimed in the Information does not only determine the jurisdiction of the Court, but also become one of the elements of the crime that must be proven beyond reasonable doubt which the prosecution failed in the instant cases since the amount alleged in the Informations were all PRESUMPTIONS OR ESTIMATES. To prove the same, no assessment has been made by the BIR at the time of the filing of these cases at the Department of Justice. In fact, the lone prosecution witness, Mr. Medardo Tipon, admitted in Court that the Letter of Authority was served to accused's company the day before the cases were filed. He admitted too that while the cases were still pending in court, there is an ongoing preliminary investigation being conducted at the BIR to determine the underdeclared income of the accused for the years 2008 and 2009. Question? Where did they get the amount of tax deficiency that they alleged in the Informations — if not thru PRESUMPTIONS AND ESTIMATES.

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It is basic that, in the collection of the BIR deficiency tax, the total correct income of the accused for the taxable years 2008 and 2009 a

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should first be determined through a proper investigation by the revenue officers. In said investigation, the DUE PROCESS REQUIREMENT should be observed.

Section 3 of Revenue Regulations No. 12-99 of the BIR is more explicit with the requirement of due process in the issuance of a deficiency tax assessment, to wit:

> "**Sec. 3**. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment* –
>
> *3.1 Mode of procedures in the issuance of a deficiency tax assessment:*
>
> *3.1.1* ***Notice for informal conference.*** – The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference', **in order to afford the taxpayer with an opportunity to present his side of the case**. If the taxpayer **fails to respond within fifteen (15) days from date of receipt of the notice** for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 3.1.2 ***Preliminary Assessment Notice (PAN).*** – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at lease by

registered mail, a **Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN</u>**, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 *Exceptions to Prior Notice of the Assessment.* – x x x.

3.1.4 ***Formal Letter of Demand and Assessment Notice***. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 ***Disputed Assessment***. – The taxpayer or his duly authorized representative may **<u>protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof</u>**. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended." (Emphasis and underscoring supplied)

In sum, the Commissioner of Internal Revenue (CIR) first issues a Notice of Informal Conference to the taxpayer based on the findings of tax deficiencies. Subsequently, a PAN is issued if, after a review and evaluation by the Assessment Division or the Commissioner himself or his duly authorized representative, it is found that the taxpayer is indeed liable to deficiency taxes. A protest may be filed by the taxpayer in answer to the Pan within fifteen (15) days from receipt thereof. In case of the taxpayer's failure to protest or reply to the PAN, or if the CIR is not satisfied with the protest or reply of the taxpayer, a Formal Letter of Demand and FAN is then issued by the CIR against the taxpayer.

In the instant cases, the undersigned found from the evidence presented by the prosecution showed that the BIR's observance of the DUE PROCESS was TOTALLY not applied to the accused and, therefore, he must be acquitted. The accused was not given a FAN or Formal Letter of Demand by the BIR at any time prior to, or at the time of the filing of the instant case in Court. Clearly, the Revenue Officers failed to observe the minimum DUE PROCESS REQUIREMENT by not sending a FAN to the accused before the filing of the instant case in Court. Such failure resulted in the violation of accused's Constitutional Right to Due Process, which our Philippine Constitution guarantees to every individual, right or poor, ordinary or celebrity. Evidently, the BIR miserably failed to afford the accused of its primordial right to due process.

Third, accused Samuel S. Santos was not positively identified in open court by the lone prosecution witness, Mr. Medardo Tipon. It is elementary rule that in all CRIMINAL CASES, the accused must be positively identified by a prosecution witness or witnesses to be considered as the AUTHOR of the CRIME or CRIMES. If not positively identified, as in the instant cases, the Accused must be acquitted.

Fourth, the credibility of the lone prosecution witness, Mr. Medardo Tipon, is open to doubt. He had previously made statements, which contradicted his present testimony in court. To cite a few:

a) He testified in court saying that he was the one who obtained from the Land Transportation Office (LTO) copies of the Certificate of Registration under the name of Kingsam and copies of Deeds of Sale when in truth and in fact three (3) of them obtained the said copies as stated in their Joint Complaint Affidavit filed before the Department of a

Justice. It was clearly stated therein that he, Mr. Jose Sanga, Ms. Manolita Dimacali were the ones who made access to the said documents in the said agency.

b) Again, according to him, he was the one who obtained Kingsam's Articles of Incorporation, Certificate of Filing Amended Articles of Incorporation and General Information Sheet for 2009 at the Securities and Exchange Commission but the truth of the matter is already stated above.

c) For the third time, according to him, he checked the registration status of Kingsam with the Revenue District No. 24-Valenzuela and he accessed it Annual Income Tax Returns and Financial Statements filed for taxable year 2008 to 2012, but for the third time, the truth of the matter is already stated above. He was not alone as he wanted to portray himself to be. He was not even the TEAM LEADER of the group. In fact, it is unbelievable that there is no assigned LEADER in the group who made the Preliminary Investigation.

d) For the fourth time, according to him, he proceeded with the computation of the deficiency income tax of the accused that may be due from Kingsam on the premise of considering the amount of ₱29,650,000.00 as undeclared income for taxable year 2008 and 2009 but the truth is in their Joint Complaint Affidavit there is <u>no name of the PERSON who did the computation</u>. Question, who really did the computation among the three (3) of them? How can we rely now on the testimonies of the lone prosecution witness?

It is elementary rule that for a witness to be believed in his story, he must be credible as well as his testimony in court. This is not present in the instant cases.

Fifth. Now, let us proceed further regarding the formula used by the prosecution witness to determine the undeclared income of the accused for the years 2008 and 2009, referring to the EXPENDITURE METHOD of tax investigation. From the said formula, Mr. Medardo Tipon, the lone prosecution witness, found out that the accused had undeclared income for years 2008 and 2009 upon scrutiny of information from the financial statements attached to the ITRs filed by

Kingsam for taxable years 2008 and 2009, and the revenues do not in any way support Kingsam, financially, to acquire the questionned buses but in his defense, the accused and his witness were able to explain and prove in court that he had no undeclared income on said years by presenting various documents, marked as Exhibits "A-1" to "A-54-A", except Exhibits "A-30-A", "A-34" and "A-36", to really prove his claims that the money used to purchase the buses subject of the present cases came partly from his wife and from the proceeds of the loans from various banks which the undersigned believes.

WHEREFORE, judgment is hereby rendered finding that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. Accordingly, accused Samuel S. Santos is hereby **ACQUITTED** with cost *de officio*.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice