REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case Nos. O-345, O-346, O-347, and O-348**
	For: Violation of Section 255, paragraph 1, of the Tax Reform Act of 1997, as amended
- versus -	
	Members:
FELONILA Z. CALUAG, 438 Saluysoy, Meycauayan, Bulacan, or 320 Violeta Street, Baranggay Saluysoy, Meycauayan, Bulacan, Accused.	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
	Promulgated: SEP 05 2018, 8:45 a.m.

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DECISION

UY, J.:

Accused Felonila Z. Caluag is charged before this Court for violations of Section 255, Paragraph 1, of the Tax Reform Act of 1997, as amended, under the respective Informations in CTA Crim. Case Nos. O-345, O-346, O-347, and O-348, the accusatory portions of which read:

CTA Criminal Case No. O-345
(Information dated May 10, 2013)

> "That on various dates in 2008 in Sta. Maria, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 8,895.066 troy

ounces valued at Three Hundred Forty-Six Million Eight Hundred Forty Thousand Three Hundred Fifty-Six Pesos and Twenty-Six Centavos (Php346,840,356.26), excluding refining charges, and despite receipt of payment amounting to Three Hundred Forty-Six Million Five Hundred Twenty-Six Thousand Pesos and Ninety-Eight Centavos (Php346,526,000.98), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2008 on or before April 15, 2009, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in said accused's failure to pay the income tax due thereon amounting to One Hundred Ten Million Eight Hundred Forty-Two Thousand One Hundred Twenty Pesos and Thirty-One Centavos (Php110,842,120.31), excluding the interest and the surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW."[1]

CTA Criminal Case No. O - 346
(Amended Information dated March 7, 2014)

"That on various dates in 2006 in Sta. Maria, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 9,403.056 troy ounces valued at Two Hundred Eighty-Six Million Nine Hundred Sixty-Seven Thousand Seven Hundred Forty-Three Pesos and Forty-Eight Centavos (Php286,967,743.48), excluding refining charges, and despite receipt of payment amounting to Two Hundred Eighty-Six Million Six Hundred Forty-Three Thousand Seven Hundred Nine Pesos and Eight Centavos (Php286,643,709.08), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2006 on or before April 15, 2007, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in said accused's failure to pay the income tax due thereon amounting to Ninety-One Million Six Hundred Eighty-Four Thousand Five Hundred Eighty-Six Pesos and Ninety-One Centavos (Php91,684,586.91), excluding the interest

[1] Information filed on December 20, 2013; Docket - Vol. I (CTA Crim. Case No. O-345), pp. 6 to 8.

and the surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW."[2]

CTA Criminal Case No. O - 347
(Information dated May 10, 2013)

"That on various dates in 2007 in Sta. Maria, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 6,589.311 troy ounces valued at Two Hundred Ten Million Five Hundred Forty-Two Thousand Sixteen Pesos and Seventy-Nine Centavos (Php210,542,016.79), excluding refining charges, and despite receipt of payment amounting to Two Hundred Ten Million Three Hundred Thirteen Thousand Five Hundred Nineteen Pesos and Fifty-Eight Centavos (Php210,313,519.58), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2007 on or before April 15, 2008, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in said accused's failure to pay the income tax due thereon amounting to Sixty-Seven Million Two Hundred Fifty-Eight Thousand Nine Hundred Twenty-Six Pesos and Twenty-Seven Centavos (Php67,258,926.27), excluding the interest and the surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW."[3]

CTA Criminal Case No. O - 348
(Amended Information dated March 7, 2014)

"That on various dates in 2009 in Sta. Maria, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 4,249.120 troy ounces valued at One Hundred Eighty-Six Million Four

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[2] Amended Information filed on March 14, 2014; Docket - Vol. II (CTA Crim. Case No. O-346), pp. 658 to 660.
[3] Information filed on December 20, 2013; Docket - Vol. I (CTA Crim. Case No. O-347), pp. 3 to 5.

Hundred Eighty-Two Thousand Five Hundred Fifty-Eight Pesos and Twenty-Four Centavos (Php186,482,558.24), excluding refining charges, and despite receipt of payment amounting to One Hundred Eighty-Six Million Three Hundred Thirty-Five Thousand Five Hundred Twenty-One Pesos and Ninety Centavos (Php186,335,521.90), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2009 on or before April 15, 2010, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in said accused's failure to pay the income tax due thereon amounting to Fifty-Nine Million Five Hundred Seventy-Six Thousand Three Hundred Sixty-Seven Pesos and One Centavo (Php59,576,367.01), excluding the interest and the surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW."[4]

Upon the filing of the respective Informations in the instant consolidated criminal cases, this Court made the following findings with respect to the existence of probable cause for the issuance of warrants of arrest against accused, to wit:

CTA Crim. Case No. O-345

In CTA Crim, Case No. 0-345, this Court found the existence of probable cause for the issuance of a warrant of arrest against the accused on January 30, 2014,[5] and issued a Warrant of Arrest on February 4, 2014.[6] On February 12, 2014, accused voluntarily appeared before this Court and posted the required bail bond for her provisional liberty in CTA. Crim. Case No. O-345.[7]

CTA Crim. Case No. O-346:

Prior to its consolidation with CTA Crim. Case No. 0-345 pending with this Division, the Third Division of this Court (or Third Division) in CTA Crim. Case No. 0-346, ordered plaintiff to rectify/correct the amount of income tax due of the accused and to present additional evidence, if any, on January 20, 2014 in CTA Crim. Case No. O-346.[8] This directive was reiterated in the Resolution

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[4] Amended Information dated March 7, 2014; Docket - Vol. II (CTA Crim. Case No. O-345), pp. 668 to 670.
[5] Docket - Vol. I (CTA Crim. Case No. O-345), pp. 640 to 642.
[6] Docket - Vol. I (CTA Crim. Case No. O-345), p. 643.
[7] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 653 to 654.
[8] Docket - Vol. II (CTA Crim. Case No. O-346), pp. 649 to 651.

dated February 28, 2014,[9] to which plaintiff filed its *Compliance (with the Resolutions of the Honorable Court promulgated 20 January 2014 and 28 February 2014)* on March 14, 2014.[10]

On April 24, 2014, the Third Division noted plaintiff's *Compliance* and admitted the Amended Information dated March 7, 2014.[11] In the Resolution dated June 6, 2014, the Third Division found the existence of probable cause for the issuance of a warrant of arrest against the accused in CTA Crim. Case No. O-346.[12] Thus, the Court issued a Warrant of Arrest on June 20, 2014.[13]

On July 3, 2014, accused Caluag voluntarily submitted herself to the jurisdiction of this Court and posted the required cash bail bond for her provisional liberty in relation to CTA Crim. Case No. O-346.[14]

Thereafter, plaintiff filed a *Motion for Consolidation* on July 17, 2014,[15] praying for the consolidation of CTA Crim. Case No. O-346 with CTA Crim. Case No. O-345, which was granted by the Third Division on July 25, 2014, subject to the conformity of the First Division.[16] In the Resolution dated September 9, 2014,[17] this Court granted plaintiff's *Motion for Consolidation* and noted the Resolution dated July 25, 2014 of the Third Division.

CTA Crim. Case Nos. O-347 and O-348

As regards CTA Crim. Case Nos. O-347 and O-348 (which were raffled to the Second Division of this Court [or Second Division]), the same were consolidated by this Court on March 3, 2014, considering that the said cases are inextricably interwoven with CTA Crim. Case No. O-345, and involve a common question of fact and law. The consolidation of the said cases was done pursuant to Section 22, Rule 119 of the Revised Rules of Criminal Procedure, and Section 3, Rule IV of A.M. No. 05-11-07-CTA, and CTA *En Banc* Resolution No. 04-2013.[18]

On March 4, 2014, this Court found the existence of probable cause for the issuance of a warrant of arrest in CTA Crim. Case No. O-347, and ordered the plaintiff to submit the originals or certified true

[9] Docket - Vol. II (CTA Crim. Case No. O-346), pp. 654 to 655.
[10] Docket - Vol. II (CTA Crim. Case No. O-346), pp. 656 to 657.
[11] Docket - Vol. II (CTA Crim. Case No. O-346), p. 663.
[12] Docket - Vol. II (CTA Crim. Case No. O-346), pp. 665 to 667.
[13] Docket - Vol. II (CTA Crim. Case No. O-346), p. 668.
[14] Docket - Vol. II (CTA Crim. Case No. O-346), pp. 670 to 672.
[15] Docket – Vol. II (CTA Crim. Case No. O-346), pp. 678 to 682.
[16] Docket – Vol. II (CTA Crim. Case No. O-346), p. 685.
[17] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 1022 to 1023.
[18] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 656 to 657.

copies of the documents attached to the Information in CTA Crim. Case No. O-348.[19] Pursuant thereto, plaintiff filed a *Motion to Admit Attached Amended Information* with an *Amended Information* on March 14, 2014 in CTA Crim. Case No. O-348,[20] which was granted on March 26, 2014.[21]

In CTA. Crim. Case No. O-347, accused voluntarily appeared on March 27, 2014 and posted the required cash bail bond for her provisional liberty.[22] On May 2, 2014, plaintiff filed its *Compliance (with the Resolution of the Honorable Court promulgated 4 March 2014).*[23]

In the Resolution dated May 22, 2014, this Court found the existence of probable cause to issue a warrant of arrest against the accused in CTA Crim. Case No. O-348.[24] Thereafter, accused likewise voluntarily appeared before this Court and posted the required bail bond for her provisional liberty in CTA Crim. Case No. O-348.[25]

Consolidated Cases

Upon arraignment, accused Felonila Z. Caluag, assisted by counsel *de parte,* Atty. Gabriel A. Silvera, after having been read the four (4) Informations separately and in succession, in a language known and understood by her, pleaded "Not Guilty" to all the four (4) Information on October 1, 2014.[26]

The Preliminary Conferences were held on November 26, 2014[27] and January 28, 2015.[28] Thereafter, both parties filed their respective *Pre-Trial Briefs*[29] on February 20, 2015.

After the Pre-trial Conference held on February 25, 2015[30], the parties filed their *Joint Stipulation of Facts and Issues* [31] which was approved in the Resolution dated March 18, 2015.[32]

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[19] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 659 to 664.
[20] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 665 to 671.
[21] Docket - Vol. II (CTA Crim. Case No. O-345), pp. 687 to 688.
[22] Docket - Vol. II (CTA Crim. Case No. O-345), pp. 699 to 700.
[23] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 712 to 713.
[24] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 975 to 977.
[25] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 986 to 987.
[26] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 1024, 1043 to 1044.
[27] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 1443 to 1444.
[28] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1450 to 1451.
[29] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1454 to 1479; and 1500 to 1502.
[30] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1531 to 1533.
[31] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1534 to 1556.
[32] Docket – Vol. III (CTA Crim. Case No. O-345), p. 1558

As stated in the *Pre-Trial Order* dated April 28, 2015,[33] the parties stipulated on the following facts and issues, to wit:

"**ADMITTED FACTS**

1. This Honorable Court has jurisdiction over the case;

2. Accused FELONILA Z. CALUAG ("Accused") is the same person named and charged in the Informations in CTA Crim. Case Nos. O-345, O-346 and O-347 and the Amended Information in CTA Crim. Case No. O-348;

3. The address of the accused is at Brgy. Saluysoy, Meycauayan, Bulacan;

4. Accused sold refined gold to the Bangko Sentral ng Pilipinas (BSP) on various dates in 2006, 2007, 2008, and 2009;

5. Accused executed Letters of Delivery and Sale covering her sale of gold to the BSP on various dates in 2006, 2007, 2008, and 2009; and

6. Accused executed a *Letter of Authorization* authorizing Roselier Cruz, Melissa Cruz, and Teodorico Zamora to sign letters of sales, to understand selling instructions and other documents/communications pertinent to the delivery and sale of panned gold to the BSP, as well as to accept check payments for panned gold on her behalf.

ISSUES

1. Whether or not accused is guilty for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended for taxable year 2006;

2. Whether or not accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2007;

3. Whether or not accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2008;

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[33] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1589 to 1630.

4. Whether or not accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2009."

To establish the culpability of accused Caluag in CTA Crim. Case Nos. O-345, O-346, O-347, and O-348, the prosecution presented four (4) witnesses, namely: (1) Ma. Racel B. Wacan; (2) Gemma H. De Ocampo; (3) Marites F. Encina; and (4) Arnel B. Magbag. They testified as follows:

1) **Ma. Racel B. Wacan** testified that she is employed as a Revenue Officer of the BIR and presently assigned at the National Investigation Division. She has been employed with the BIR for fourteen (14) years. As a Revenue Officer, her duties and functions include conducting examinations of taxpayers, such as the examination and audit of their books of accounts and other accounting records. This also includes verification from third party sources and information of the correctness of the returns filed by a taxpayer in order to determine the correct tax liabilities of a particular taxpayer, to submit reports about the status of preliminary investigation and final reports of investigation on the cases they investigate, to make a proper assessment of the correct taxes that should have been paid by the taxpayer, and to inform the BIR of any tax irregularities or fraud that they encounter during audit.

Aside from her, Amelita M. Tugade and Jose Amor B. Dayoan are also members of their group, which conducted the investigation on the tax liabilities of Caluag. They were led by their supervisor Arnel B. Magbag. Their investigation was prompted by the Memorandum (Exhibit "P-342") issued by Atty. Sixto C. Dy, Jr., Chief of the National Investigation Division on January 24, 2011.

After receiving the said Memorandum, requiring them to investigate the accused, they were also given confidential information that the accused was involved in hundreds of gold sales transactions with the *Bangko Sentral ng Pilipinas (BSP)*. Consequently, they commenced their initial investigation by checking their office computer database to get a profile of the person they were investigating.

Based on their database, they found out that Caluag was registered only with the BIR as a One-Time Transaction Taxpayer (ONETT). They also listed down the registered address of Caluag, which was at 438 Saluysoy, Meycauayan City, Bulacan.

Thereafter, they sent access-to-records letters to the BSP, requesting for information as to Caluag's annual gold sales as well as supporting documents such as Letters of Delivery and Sale (Exhibits "P-7" to "P-339") and Letters of Authorization of transactions involving the accused.

In response, the BSP supplied them with the requested supporting documents signed by Caluag, covering sale transactions from 2005 to 2009 of hundreds of millions of pesos per year. Next, the BSP issued a Certification dated April 1, 2011 (Exhibit "P-5") and signed by Deputy Director Simeona G. Llanes, summarizing Caluag's annual gold sales.

For 2006, accused's annual gold sales to the BSP amounted to ₱286,643,709.08. For 2007, her annual gold sales to the BSP amounted to ₱210,313,519.58. For 2008, her annual gold sales to the BSP amounted to ₱346,526,000.98. For 2009, her annual gold sales to the BSP amounted to ₱186,335,521.90.

After receiving the said documents they requested for a certification detailing the tax payments of Caluag for taxable years 2005 to 2009 from BIR Revenue District Office (RDO) No. 25B, Sta. Maria, Bulacan, where Caluag was registered. Considering the large amount of income the accused was earning *vis-à-vis* her BIR registration as an ONETT Taxpayer only, they requested for a Letter of Authority to examine Caluag's books of accounts and other accounting records.

RDO No. 25B then issued a Certification on April 14, 2011 (Exhibit "P-2"), signed by their Revenue District Officer, Teogenes T. Abrigo, Jr., confirming that Caluag is indeed registered as an ONETT Taxpayer, and that Caluag did not file Income Tax Returns (ITR) and Value-Added Tax (VAT) returns for taxable years 2006 to 2009.

The day after they received the certification, the requested Letter of Authority (LA) No. 211-2011-00000110 (eLA201000069744) (Exhibit "P-341") against Caluag was issued on April 15, 2011 by the CIR covering taxable years 2005 to 2010. Thereafter, they served the LA, and the same was allegedly received on April 19, 2011 by Caluag herself.

After confirming from the certification of BIR RDO No. 25B that accused did not file tax returns, witness allegedly found that violations of the NIRC of 1997, as amended, were committed by Caluag. This is based on the fact that she failed to file her ITRs despite earning hundreds of millions of pesos in gold sales every year for taxable years 2006 to 2009. They then proceeded to collate their evidence against Caluag and computed her tax liabilities.

Based on their computation, as Caluag earned income of ₱286,967,743.48 in gold sales for taxable year 2006, she is liable for income taxes in the amount of ₱212,403,626.35.

For taxable year 2007, as Caluag earned income of ₱210,313,519.58 in gold sales, she is liable for income taxes in the amount of ₱142,364,727.28. For taxable year 2008, as Caluag earned income of ₱346,526,000.98 in gold sales, she is liable for income taxes in the amount of ₱212,447,397.27. For taxable year 2009, as Caluag earned income of ₱186,335,521.90 in gold sales, she is liable for income taxes in the amount of ₱102,272,397.37.

In preparation of the evidence against the accused, they subsequently reduced this computation in writing, also computing therein 20% annual interest and the 50% surcharge mandated by law.

Thereafter, they recommended the filing of criminal charges against the accused and prepared the Complaint-Affidavit against her for filing before the Department of Justice (DOJ). The CIR approved their recommendation and issued a Referral Letter (Exhibit "P-346") to the DOJ authorizing their group to file a criminal case against Caluag. They filed the said Complaint-Affidavit before the DOJ on April 28, 2011.

Preliminary investigation was allegedly conducted before Prosecutor Crisaldo R. Rioflorido, where Caluag submitted her Counter-Affidavit. In response thereto, they filed their Reply-Affidavit, while Caluag filed her Rejoinder-Affidavit. In both of her Affidavits, Caluag, whilst raising various defenses, nonetheless, admitted that she indeed failed to file her ITRs.

The case was subsequently reassigned to Prosecutor Benjamin R. Samson as Prosecutor Rioflorido had already resigned from the DOJ. Prosecutor Samson then summoned parties to a clarificatory hearing to verify facts and issues. In the said hearing, Caluag once again admitted before the investigating prosecutor, that she had failed to file her ITRs. Subsequently, Caluag even executed a Motion to Reopen preliminary investigation raising various defenses but nonetheless, admitted that she failed to file her ITRs.

The DOJ issued a resolution finding probable cause against Caluag and recommended the filing of an Information for violation of Section 255 of the NIRC of 1997, before courts of law.

Despite the service of the LA, Caluag was allegedly unable to comply with their request for accounting records and books of accounts. Then they issued a Preliminary Assessment Notice (PAN) against Caluag. Since then, Revenue District Officer Teogenes Abrigo retired from government service, and thus, they asked for a new witness from their district office to testify in this case. Thereafter, Gemma H. De Ocampo of RDO No. 25B issued a Certification (Exhibit "P-355") on November 4, 2014 similarly stating that Caluag was only registered as an ONETT taxpayer and that she failed to file her Quarterly Income Tax Returns. In the meantime, no satisfactory explanation was made by Caluag to defeat their Preliminary Assessment. Thus, the BIR issued a Final Assessment Notice (FAN) against her.[34]

On cross-examination, she testified that the investigation of the accused for taxable year 2006 to 2009, started in 2011, upon the issuance of the Memorandum of Atty. Sixto Dy. A confidential information was allegedly received by the Division Chief from the BSP. The Chief then issued a Memorandum of Assignment.

The BSP furnished the BIR Letters of Delivery and Sale and Letters of Authorization of transactions involving the accused. A Certification was also issued by the BSP (Exh. P-5). Her answer to Question No. 13 was based on the Certification issued by the BSP. Thus, for 2006, accused's annual gold sales to the BSP amounted to ₱286,643,709.08; ₱210,313,519.58 for 2007; ₱346,526,000.98 for 2008 and ₱186,335,521.90 for 2009.

She affirmed the veracity of her statement in answer to Question No. 25, found on page 8 of her Judicial Affidavit, to wit: that there was no return filed by the accused, therefore the accused is not entitled to a deduction of cost of sales or expenses from the sale of gold from 2006 to 2009.

Allegedly, a Letter of Authority, with the Check List of Requirements such as books of accounts and other accounting records, was sent to the accused to give her the opportunity to give supporting documents. This Letter of Authority was received by the accused on April 19, 2011. She explained verbally to her that she needs to present proof of expenses.[35]

On re-direct examination, she testified that the tax liabilities of the accused were computed as individual. Personal exemptions

[34] Judicial Affidavit of Ma. Racel B. Wacan dated March 24, 2015, Exhibit "P-357," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1571 to 1584.
[35] TSN dated April 29, 2015, pp. 13 to 40.

were allegedly deducted to arrive at the net income. For the first ₱500,000.00, the tax is ₱125,000.00 and the excess will be multiplied by 32%. The BSP provided the gross sales of accused for TY 2006 to 2009. No deductions were allowed because the accused failed to substantiate any expenses incurred.

Allegedly, accused was registered with the BIR as an ONETT Taxpayer. Upon request for a Certification from RDO No. 25B, it was allegedly found that accused did not file any returns for 2006 to 2009. Again, witness said the Letter of Authority was signed by accused in her presence, and was on this occasion when she was informed to submit supporting documents.[36]

On re-cross examination, she testified that there is no law or administrative issuances supporting her position to consider gross sales as income of the accused.[37]

On clarificatory questions from the Court, she confirmed that the definition of taxable income under the NIRC, is gross income less allowable exemptions and deductions. She stated that the Check List of Requirements, attached to the Letter of Authority as Annex "A," was explained to accused who signed the document to prove her receipt of the said document.[38]

2) Witness Gemma H. De Ocampo testified that she is employed as Revenue Officer III of the BIR and presently assigned as OIC-Chief Collection Section of RDO No. 25B. She has been employed by the BIR for around 18 years. The jurisdiction of RDO No. 25B includes the municipalities of Angat, Doña Remedios Trinidad, Marilao, Meycauayan, Norzagaray, Obando, Santa Maria, San Ildefonso, San Miguel, San Rafael, and San Jose Del Monte City. As OIC-Chief of the Collection Section, her duties include the supervision and monitoring of the collection functions of the Section in accordance with the objectives set by our Revenue District Officer.

She testified on the Certification she issued on November 4, 2014, which states the registration information of Felonila Z. Caluag, a taxpayer with residence in Brgy. Saluysoy, Meycauayan, Bulacan, which area is under their RDO. She issued the Certification (Exhibit "P-4") upon the request of Atty. Sixto Dy in a letter dated October 27, 2014. The said letter requested for the tax information of Felonila Z. Caluag. Allegedly, she utilized the BIR Integrated Tax System (ITS) to access Caluag's tax information. The program is utilized by the

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[36] TSN dated April 29, 2015, pp. 41 to 45.
[37] TSN dated April 29, 2015, pp. 46 to 49.
[38] TSN dated April 29, 2015, pp. 49 to 54.

BIR, wherein all tax returns received nationwide are encoded into a computerized database system and stored, thus allowing them to monitor the filing of tax returns for efficient data-keeping purposes.

She verified, through the Integrated Tax System, and discovered that Ms. Caluag only registered with the BIR for a ONETT. She did not register nor declare any business activities with the BIR. She also found out that Caluag did not file Annual Income Tax Returns for taxable years 2005 to 2009. Thereafter, she issued a Certification stating the findings of their RDO.[39]

On cross-examination, she said that she does not have any personal knowledge of any transaction that accused may have had, which is the subject matter of the certification.[40]

On clarificatory questions, she testified that the sources/bases for the information in the Certification (P-4) was the data which appeared in the BIR's ITS, after she input the Tax Identification Number (TIN) of the accused. She found out that the accused was registered under "ONETT." She continued explaining that she was able to verify the alleged failure of the accused to file any other returns, by accessing the Taxpayer's Assistant Ledgers found in the BIR's ITS. She did not print out the data/information in support of her certification.[41]

De Ocampo also presented a series of pages of the print-outs of the ITS or the BIR Registration System. The first page indicated the full name and TIN of the accused. The second page states what kind of taxpayer she is, which is a One-Time Transaction type of taxpayer. The registration date is on September 20, 2000. The third page indicates the full name, birthday, marital status, and tax type (percentage tax, capital gains tax, registration and donor's tax).[42]

3) Marites F. Encina testified that she is presently the Acting Deputy Director of the Financial Services Group (FSG), Security Plant Complex, BSP, and that she has been with the BSP since November 10, 1977. On April 1, 2011, she was assigned as an Assistant Manager at the Budget Administration and Disbursement Division (BADD). The BADD is in charge of budget administration, disbursements, and gold accounting. As Assistant Manager of BADD, her duties and responsibilities include checking and verifying the accuracy and completeness of documents forwarded by the

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[39] Judicial Affidavit of Gemma H. De Ocampo dated March 24, 2015, Exhibit "P-358," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1565 to 1570.
[40] TSN dated July 22, 2015, pp. 12 to 15.
[41] TSN dated July 22, 2015, pp. 17 to 26.
[42] TSN dated September 2, 2015, pp. 5 to 13.

Office by the Mint and Refinery Operations Department (MROD) for payment, among others.

She testified on the Certification issued by her former immediate superior, Deputy Director Simeona G. Llanes, who has since retired, relating to the gold sales to the BSP by Caluag. Allegedly, she was the one who prepared the Certification, and the same indicates the total annual gold sales and net payments of the BSP to Caluag for several years. In particular, for 2006, Caluag's annual gold sales to the BSP resulted in a net payment of ₱286,643,709.08. For 2007, Caluag's annual gold sales to the BSP resulted in a net payment of ₱210,313,519.58. For 2008, Caluag's annual gold sales to the BSP resulted in a net payment of ₱346,526,000.98. For 2009, Caluag's annual gold sales to the BSP resulted in a net payment of ₱186,335,521.90.

Allegedly, the Certification (Exhibit "P-5"") was issued upon the request of the BIR Enforcement Service. The identification line at the bottom portion of the certifications indicates who prepared it. In this case, the letters "mfe" are her initials, meaning she caused the preparation of the certification for Ms. Llanes.

Troy ounce (Tr. Oz.) is a unit of measurement for weight. In this case, it was used to measure the weight of gold. To relate it to our metric system, 1 troy ounce is equal to approximately 31.1 grams. The amount of troy ounces stated in the certification reflects the total contents paid in troy ounces that Caluag sold to the BSP for 2006, 2007, 2008, and 2009. It is based on the computation sheet prepared by the Accounting Division, the Financial Services and Data Management Group. The amount is computed by multiplying the contents at Metal Recovery Factor by the Gold Rate at the date of sale, multiplied further by the Peso-Dollar Exchange Rate at the date of sale.

As for the column with the heading "Value," the same stands for the total value, in pesos, of the gold sold by Caluag for the entire year. The column "Refining Charges" refers to the fees shouldered by the gold seller to cover the costs incurred by the BSP in refining the raw gold sold to it so that it is converted into gold bars acceptable for sale in the market. This is likewise based on the computation sheet prepared by the Accounting Division, the Financial Services and Data Management Group. The column "Net Payment," refers to the amount paid to Caluag by the BSP for the value of the gold she sold, less refining charges.[43]

[43] Judicial Affidavit of Marites F. Encina dated August 26, 2015, Exhibit "P-360," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1673 to 1681.

On cross-examination, she testified that the bases for the Certification are from the data gathered from all the computation sheets for the payments of deliveries to the payee. For the years 2006-2009, based on the Certification, the transactions are encoded daily, which is called the payment file. It is then consolidated monthly and annually. Her office validates the computation sheet by referring to the original supporting documents such as the reception note and the result of the assay. The Value Column is arrived at by applying the dollar rate for the day. The Letter of Delivery and Sale allegedly determines the date of sale and peso-dollar rate on that date. These are the source documents for the value on the third column. When asked if she can produce these documents in Court, she replied that she needs to ask permission from the Monetary Board.

"Refining charges" are based on the results of the assay, and the assay is based on the out turn reports. The clients are given a copy of the reports. Allegedly, the original copy of the computation sheets is still on file, which is attached to the documents for payment for each delivery.[44]

4) Arnel B. Magbag testified that he is employed as a Revenue Officer of the BIR and presently assigned as Group Supervisor at the National Investigation Division. He has been employed by the BIR since 1988, or for 27 years already. As a Revenue Officer, his duties and functions include assisting and conducting investigations and audits of taxpayers' books of accounts and other accounting records. This includes the making of a proper assessment of the correct taxes that should have been paid by the taxpayer, and service of assessment notices thereof.

He is a member of the group that served the PAN (Exhibit "P-352") and FAN (Exhibit "P-353") to Caluag, together with Amelita M. Tugade, Racel B. Wacan, and Jose Amor B. Dayoan. He said that he went to the registered address of Caluag in Brgy. Saluysoy, Meycauayan, Bulacan. In the said residential address, Marinela C. Labudlay, who introduced herself as Caluag's daughter, received the PAN, and signed the receiving copy in his presence. After the service of the PAN, Caluag made a reply to the PAN. In due course, a FAN was issued and served on Caluag on December 10, 2014. Caluag signed the receiving copy of the FAN in his presence.[45]

On cross-examination, he testified that as a member of the team who investigated the accused, he checked if the accused filed

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[44] TSN dated September 2, 2015, pp. 20 to 44.
[45] Judicial Affidavit of Arnel B. Magbag dated September 17, 2015, Exhibit "P-361," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1702 to 1707.

her income tax return and the group made access to records to the BSP to determine the amount of gold she sold to the BSP. Accused allegedly failed to submit her income tax return and that no expenses were presented to support any deductions for the gross sales. However, a ₱20,000.00 personal exemption was deducted. Hence, the total deficiency income tax amounted to ₱217,740,441.00.[46]

On re-direct examination, he testified that the accused did not file her ITR as certified by RDO Sta. Maria, Bulacan, and that she was given the opportunity to submit sufficient proof, but she failed to do so. According to the witness, Section 34 (a) of the NIRC, as amended, is the provision that governs deductions from gross income. Expenses to be claimed must be supported by invoices or official receipts. The only deduction is the personal exemption of ₱20,000.00 for single individual.[47]

On re-cross examination, he testified that at the time of the filing of the complaint, they were able to determine the gross income of the accused less personal exemption.[48]

On clarificatory questions, he testified that the Formal Letter of Demand imposed a 50% surcharge for willfully filing false or fraudulent return but witness maintains that the accused failed to file her Income Tax Return. The 50% surcharge was imposed based on Section 248 of the NIRC.[49]

Upon completion of the oral testimonies of the foregoing witnesses, the prosecution filed its *Formal Offer of Evidence*[50] on May 23, 2016, to which the accused filed her *Comment on Formal Offer of Evidence* on May 25, 2016.[51]

In the Resolution[52] dated June 22, 2016, this Court admitted Prosecution Exhibits "P-2," "P-4," "P-359," "P-359-a," "P-359-b," to "P-359-c," "P-352," "P-353," "P-5," "P-138," (Computation Sheet for 2006 used as basis in preparing the Certification dated 1 April 2011), "P-139" (Computation Sheet for 2007 used as basis in preparing the Certification dated 1 April 2011), "P-140" (Computation Sheet for 2008 used as basis in preparing the Certification dated 1 April 2011), "P-141" (Computation Sheet for 2009 used as basis in preparing the Certification dated 1 April 2011), "P-341," "P-342," "P-357," "P-357-1," "P-358," "P-358-1," "P-360," "P-360-a," "P-361," and "P-361-a." On

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[46] TSN dated September 23, 2015, pp. 15 to 24.
[47] TSN dated September 23, 2015, pp. 25 to 28.
[48] TSN dated September 23, 2015, pp. 29 to 34.
[49] TSN dated September 23, 2015, pp. 34 to 41.
[50] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1779 to 1787.
[51] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1788 to 1790.
[52] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1795 to 1796.

the other hand, this Court denied the admission of the following Exhibits: "P-11" to "P-136," "P-137" to "P-141," "P-142" to "P-214," "P-216" to "P-339," "P-340," "P-344," "P-215," "P-343," "P-346."

Meanwhile, Caluag filed her *Motion for Leave to File Demurrer to Evidence*[53] on July 4, 2016, to which plaintiff filed its *Comment/Opposition (to the Accused's Motion for Leave of Court to File Demurrer to Evidence)*[54] on July 11, 2016. In the Resolution dated August 3, 2016,[55] this Court granted the said Motion for Leave to File Demurrer to Evidence.

On August 15, 2016, accused Caluag filed her *Demurrer to Evidence,*[56] to which plaintiff filed its *Opposition (To Accused's Demurrer to Evidence)*[57] on August 22, 2016. In the Resolution dated October 12, 2016,[58] this Court denied the Demurrer to Evidence.

On November 7, 2016, accused Caluag filed a *Motion for Reconsideration,*[59] to which the plaintiff filed its *Comment and Opposition (To the Accused's Motion for Reconsideration dated November 4, 2016)*[60] on November 28, 2016. In the Resolution dated January 5, 2017,[61] this Court denied the Motion for Reconsideration for lack of merit.

To counter the prosecution's evidence, the defense presented two (2) witnesses, namely: 1) accused Felonila Z. Caluag; and 2) Roselier C. Cruz. They testified as follows:

1) Felonila Z. Caluag testified that she is of legal age, married, with residence at Saluysoy, Meycauayan, Bulacan. Her educational attainment is only up to high school, and she is not fluent in English. She claim that she did not profit from the transactions because of the capital required to purchase gold, expenses incurred for transportation, high costs for assay/testing at BSP, salaries of employees and security, and other expenses. All of these expenses are deducted from the ₱2.00 profit margin per gram of gold.

She further said that she started working as a gold trader since 1960 because there are many gold traders, jewelers, travelers and

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[53] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1797 to 1802.
[54] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1803 to 1807.
[55] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1811 to 1813.
[56] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1814 to 1847.
[57] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1850 to 1858.
[58] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1863 to 1866.
[59] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1867 to 1879.
[60] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1882 to 1889.
[61] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1893 to 1895.

gold refiners at Meycauayan, Bulacan. This is the trade her parents, relatives and friends are engaged in. Allegedly, she studied the gold trading industry, starting from those selling retail, to those big-time gold traders; how they negotiated in buying, the pricing, and the actual sale of gold; and that she also learned the process of refining gold because there were many refiners in Meycauayan.

Allegedly, travelers from Saluysoy, Meycauayan, and other nearby towns search for good prices for their gold or "*kulantsang*," as they call it. These are mixed gold, with different grades and karats,[62] such as rings, necklaces, jewelry and other things which contain gold. Before selling, traders already know the price of BSP for a particular day, usually verified through calling the BSP hotline. She said it is important to know the BSP buying rate beforehand because buyers would normally buy gold at a price which is lower by ₱2.00 than the BSP prevailing rate. Hence, if, on a particular day, the rate was ₱1,500.00 per gram, then the buyers would buy at ₱1,498.00 per gram.

Although rare, there are times when gold traders would buy gold at higher prices, when the supply of gold is low, or when the market price for selling gold is high. This is especially important for big-time traders, who purchase gold from the market, so they can have continuous business. The said margin of ₱2.00 covered the buyers' costs like processing/handling fee of ₱1,600.00 which must be paid to the BSP per transaction, including agent commission, salary, transportation and security costs.

She has been selling gold using her small savings and borrowed funds for as long as she can remember. Allegedly, there is only a small profit margin, due to expenses related to trading, as well as interest payments on her loans, and that she uses the capital for continuing her business, to earn money for everyday expenses for her children and grandchildren. After she earns enough gold for sale, she sells it to other traders and buyers.

In 2004, she found out from other gold traders that they can sell gold to the BSP, which is why she tried to do so. She talked to Roselier C. Cruz, and told him to go to the BSP and inquire about the procedure for selling gold to them. She knew that the BSP needed to buy gold for a stable economy, and she was told by the BSP that they would no longer need to pay taxes. She was happy because she can contribute to the economy by selling gold to the BSP and she did not have to worry about paying taxes.

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[62] Note: Karats is a unit of purity, in contrast to carats, which is a unit of weight or measurement.

She went to the BSP with Roselier C. Cruz, and there they learned that it was easy to sell gold as the BSP required only residence certificate of the seller of gold at that time. They were also made to understand that gold sellers need not pay taxes on said sales and that the BSP would settle all taxes. They believed that by selling gold, they would be able to help increase the country's gold reserves, which, in turn, would strengthen the local economy.

Over the years, they confirmed from BSP that they would no longer be required to pay taxes on the transactions. They were happy because this was a tricky subject and they thought that the BSP should rightly shoulder taxes because the gold traders already bore costly expenses. Their profit margin was already small and they would not earn much if taxes would still be imposed on them. She said that if the transactions were not tax-exempt, they would no longer sell gold to the BSP because of the additional transportation and security costs they incurred, when delivering gold to the BSP.

Allegedly, when the gold is delivered to the BSP, it will be receipted, weighed and processed through preliminary assay to determine its purity. If it was found at least 99.5% pure, buying shall be based on the prevailing gold rate for the day, otherwise, the rate will be lower. However, before this is done by the BSP, an assay fee of ₱1,600.00 must first be paid per transaction. Payment for gold processed at the BSP is made after one (1) day from delivery. BSP would pay ninety percent (90%) of the price, which is why the seller had to go back on the following business day for it. The balance shall be settled within ninety (90) days or longer. At that time, the balance would be settled after six (6) months.

The amount a gold trader would realize would depend on several factors – the traders' gold acquisition price, which is usually ₱2.00 lower than the BSP rate. Usually, big-time traders buy at higher rates to collect more gold, because higher quantities and bulk sales earn more money. Other "small-time" gold traders, like her, find it harder to compete. Allegedly, it is also possible for traders to unknowingly purchase lower quality gold, and if you are unlucky, there might be a "bomb" in your purchase, or one filled with stones. In these cases, such transactions are sure to result in a loss, as one would no longer be able to sell it at a good price.

Traders also have to spend for the processing fee at the BSP, transportation/security for delivery to the BSP, expenses for staff services. Thus, the profit margin is really low, if there is any profit at all. A typical gold transaction is illustrated as such: for example, a kilo of gold is bought for ₱1,498.00/gram, assuming the buying rate was ₱1,500.00, its weight might still decrease due to impurities. Then

BSP would impose a processing fee of ₱1,600.00 per sale transaction. Furthermore, you still have to spend for transportation costs. There would be a small amount left out of the ₱2,000.00 (₱2.00 x 1,000 grams) you would earn, when you factor in expenses and interest expenses for the capital that was loaned. Despite the costs, dealing with the BSP was easy and convenient, although they had to wait for full payment. Nevertheless, it was satisfying to do so, because they thought they contributed to the economy. This is the only trade she knew, and it is hard, but a noble job.

The BIR is collecting taxes from her, on the assumption that she earned a lot of money from the sale of gold. However, she barely earned any profit from her transactions. She also pointed out that the computation of the BIR was based on the payments of the BSP, and not from her profits, if any. The basis should not be the gross sales, because capital and expenses of the gold traders are not taken into consideration. Capital and expenses are not taxable and only the profits should be taxed.

The BIR did this because it is the easiest way to file a case against anyone, leaving the person to explain it to the courts. The BIR does not know whether the person they are after earned money, and the situation appears to be reversed. Instead of the BIR proving that she earned money, she is the one left to defend herself against the offenses charged.

It is allegedly hard to determine whether the gold traders earned money or not, because there are a lot of expenses relating to the sale of gold to the BSP, including the delays in payment. Aside from this, the buying rate of the BSP is not constant or fixed, because this depends on the worldwide price, U.S. Dollar rate and conversion of troy ounces to grams. Everyday, the price changes per gram. Sometimes, you are even forced to sell at a loss, to regain some money to use as capital. She is unhappy because she is suffering from facing charges without strong evidence that she earned income, considering that the BIR's basis was gross income, without factoring in her expenses. She did not declare her income and did not pay taxes because she did not earn any profit from her transactions. She was also enticed by the BSP to sell to them because there would no longer be any taxes. Along with other gold traders, she believed that there would be no taxes on the transactions.[63]

On cross-examination, she testified that documentary proof to substantiate expenses, such as official receipts covering gas

[63] Judicial Affidavit of Felonila Z. Caluag dated March 10, 2017, Exhibit "A-7," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1897 to 1909.

expenses and all other expenses were lost due to the flood caused by typhoon Ondoy in Meycauayan, Bulacan. And despite the small income earned, she continued to transact with the BSP because it is hassle free, and they are able to help the government in return.

When they started delivering gold, the BSP informed them that there is nothing to be paid, as long as they bring their cedula. The BSP informed them that the tax will be shouldered by BSP, considering that the ₱2.00 profit margin will not be sufficient enough. The BSP merely verbally informed them to just deliver the gold, and they did as they were told, considering that this will help the reserves of the government. Since they started delivering gold to the BSP, they were not instructed to pay any tax.[64]

On re-direct examination, she testified that her expense include an assay fee of ₱1,600.00 per transaction, gasoline expenses every time they collect payment. She relied on the statement of the BSP that as long as they deliver gold, they will not pay any tax.[65]

On clarificatory questions, she testified that she graduated from high school. She earned very little income in 2006, just enough for expenses. For 2008, she sold ₱346,000,000.00 worth of gold to the BSP, at approximately ₱1,500,000.00 per kilo. Allegedly, for every kilo worth ₱1,500,000.00, she only earns ₱2,000.00. For every delivery, an assay amounting to ₱1,600.00 is collected. Therefore, it is practical to just deliver at least 2 kilos so that out of the ₱4,000.00 income, the amount of ₱1,600.00 assay fee will be deducted from the ₱4,000.00. In the ₱2,400.00 left after deducting the assay fee, she would still incur gasoline expenses and labor costs. Thus, for every 2 kilos, only about ₱1,000.00 remains as net profit.

Allegedly, all her documents showing proof that she bought and sold gold from pawnshops, or those receipts she signed when she delivered the Certificate of Title of her property as security, to a certain Edgar Salcedo, were lost during the flood.[66]

2) Roselier C. Cruz testified that he is a Filipino, of legal age, married, with residence at Saluysoy, Meycauayan, Bulacan. He finished second year of college, major in Architecture.

He testified with regard to his participation in the sales of gold to the BSP by accused Caluag, who is allegedly one of the gold traders in Saluysoy, Meycauayan. Accused allegedly used to buy

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[64] TSN dated May 31, 2017, pp. 11 to 21.
[65] TSN dated May 31, 2017, pp. 22 to 26.
[66] TSN dated May 31, 2017, pp. 26 to 56.

gold from sellers and she would sell them to third parties in turn. There are many gold sellers who come to Meycauayan. However, before selling the gold, they already knew the buying rate for a particular day and this can be verified by calling the BSP hotline number. It is important to know the BSP buying rate beforehand because buyers would normally buy gold at a price which is lower by ₱2.00 than the BSP prevailing rate. Hence, if, on a particular day, the rate was ₱1,500.00 per gram, then the buyers would buy at ₱1,498.00 per gram. The said margin of ₱2.00 covered the buyers' costs like processing/assay fee of ₱1,600.00 which must be paid to the BSP per transaction, including commission, labor, transportation and security costs.

His agreement with accused Caluag was to help her sell gold to the BSP; and that Caluag needed his assistance because she said she was not used to dealing with the personnel of the BSP. He further said that he went to the BSP located at Diliman, East Ave., Quezon City, where he learned that it was easy to sell gold as the BSP required only residence certificate of the seller of gold at that time. He was also made to understand that gold sellers need not pay taxes on said sales and that the BSP would settle any and all such taxes. They were happy because it was so easy to deal with the BSP, and also because they did not have to worry about paying taxes. They were elated to contribute to the economy by selling gold to the BSP. They believed that by selling gold, they would be able to help increase the country's gold reserves, which, in turn, would strengthen the local economy.

Allegedly, he was always in close contact with the other gold traders because they would usually talk and confer with each other during deliveries and while waiting for processing of gold and payment, and he can say that they were similarly happy to deal with the BSP for the same reasons. All the gold traders dealing with the BSP were told that they did not have to pay taxes on the sales and that they should just continue to deliver and sell gold to the Central Bank. They were happy to learn that there would be no taxes because this matter is complicated. They believed the BSP should really shoulder any taxes and not the gold sellers who were already saddled with substantial costs and expenses.

He also said that it was important that the sales be tax-exempt, because gold sellers would not realize any profit if the transactions were subjected to taxes because of their costs and expenses incurred in acquiring gold and selling it to the Central Bank. If it were otherwise, sellers would go elsewhere to sell their gold.

When the gold is delivered to the BSP, it will be receipted, weighed and processed through preliminary assay to determine its purity. If it was found to be at least 99.5% pure, buying shall be based on the prevailing gold rate for the day, otherwise, the rate will be lower and this will result to losses on the part of the sellers. Payment for gold processed at the BSP is made after one (1) day from delivery. BSP would pay 90% of the price, which is why the seller had to go back the following business day for it. The balance shall be settled within 90 days or longer.

The amount a gold trader would realize would depend on several factors – the traders' gold acquisition price, which is usually ₱2.00 lower than the BSP rate. Traders also have to spend for the assay costs, delivery, security, commission whenever applicable and other similar expenses incidental to the transactions. It is difficult, nearly impossible, to accurately quantify the gain, if any, from these transactions on account of the variables.

A typical gold transaction is illustrated as such: for example, a gram of gold is bought for ₱1,498.00, assuming the buying rate was ₱1,500.00, its weight might still decrease due to impurities. Then BSP would impose an assay fee of ₱1,600.00 per sale transaction. Furthermore, you still have to spend for delivery like gasoline and personnel and other costs. Despite the costs, dealing with the BSP was easy and convenient, although they had to wait for full payment. Nevertheless, it was satisfying to do so, because they thought they contributed to the economy.

He does not know if accused earned income from the transactions with the BSP, because of the expenses and other factors which affected their sales to the Central Bank. Allegedly, Caluag would roll the funds she received from payments from the BSP, and buy again from gold sellers in Meycauayan. It was a continuing and never-ending process of buying and selling of gold. He personally knew that the capital she used in the beginning of her transactions was borrowed from a money lender, using her land title as collateral.[67]

On cross-examination, he testified that in helping Caluag in her dealings with the BSP, he would get around ₱300.00 or ₱400.00 per trip, or just how much they would give him, because he was just a delivery boy. Someone in Mint and Refinery Department of the BSP made him understand that they would not pay taxes. Gold traders are happy to deal with the BSP because they are assured of

[67] Judicial Affidavit of Roselier C. Cruz dated July 14, 2017, Exhibit "A-8," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1922 to 1929.

payment. There is also a little gain from trading with the BSP, but he did not pay taxes for that. He does not know how much Caluag is earning in terms of net income, because he does not know how much expenses she incurs. He only knows how much the margin is from the selling. He allegedly represented Caluag for about five or six years in her dealings with the BSP.[68]

On re-direct examination, he testified that every time they receive money from the BSP they use it for buying gold again, for roll over.[69]

After the completion of the oral testimonies of defense witnesses, accused, through counsel, filed her *Formal Offer of Evidence*[70] on July 31, 2017, to which the plaintiff filed its *Comment To Formal Offer of Evidence of Accused* on August 4, 2017.[71] In the Resolution dated September 15, 2017,[72] this Court admitted Exhibits "A-7," with sub-markings, and "A-8," with sub-markings, and both parties were ordered to file their respective memoranda.

With the filing of the *Memorandum for the Accused* on October 19, 2017,[73] as well as the *Memorandum (For the Plaintiff)* on October 19, 2017,[74] the instant consolidated cases were submitted for decision on October 26, 2017.[75]

In the Resolution dated February 12, 2018, this Court set the case for the re-arraignment of accused Caluag in CTA Crim. Case No. O-346,[76] because what was read during her arraignment on October 1, 2014[77] was the original Information dated May 10, 2013,[78] instead of the Amended Information dated March 7, 2014.

On May 10, 2018, accused was re-arraigned on said Amended Information dated March 7, 2014 and she entered a plea of Not Guilty with the assistance of defense counsel de parte, Atty. Gabriel A. Silvera.[79]

As directed by the Court, defense counsel, filed a Manifestation on May 30, 2018, stating that she will no longer present further

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[68] TSN dated July 19, 2017, pp. 15 to 32.
[69] TSN dated July 19, 2017, pp. 32 to 37.
[70] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1935 to 1937.
[71] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1938 to 1942.
[72] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1946 to 1947.
[73] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1950 to 1987.
[74] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1988 to 2000.
[75] Docket – Vol. III (CTA Crim. Case No. O-345), p. 2002.
[76] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 2004 to 2005.
[77] Docket – Vol. II (CTA Crim. Case No. O-345), pp. 1024, 1043 to 1044.
[78] TSN dated October 1, 2014, pp. 10 to 12.
[79] Docket – Vol. III (CTA Crim. Case No. O-345), p. 2022.

evidence in CTA Crim. Case No. O-346. Thus, the instant consolidated cases were submitted for decision on June 6, 2018.[80]

Hence, this Decision.

THE ISSUES

The issues in these consolidated criminal cases are as follows:

> "1. Whether or not Accused is guilty for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended for taxable year 2006;
>
> 2. Whether or not Accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2007;
>
> 3. Whether or not Accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2008;
>
> 4. Whether or not Accused is guilty for violation of Section 255 of the NIRC of 1997, as amended for taxable year 2009."[81]

Plaintiff's Arguments

The prosecution contends that it was able to prove the guilt of the accused for the crime charged in the Information.

As a Filipino citizen deriving income within the Philippines, accused Caluag's income is subject to income tax under Section 24 of the NIRC of 1997, as amended. Allegedly, accused derived income from the sale of gold to the BSP. Consequent thereto, accused is mandated to declare all her income for each taxable year in her tax returns and to pay the corresponding taxes due thereon as sanctioned by Section 74(A) of the NIRC of 1997, as amended.

The prosecution has proven that accused is a person required by law to file a return and to declare all her income for taxable years 2006, 2007, 2008 and 2009.

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[80] Docket – Vol. III (CTA Crim. Case No. O-345), p. 2049.
[81] Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1535 and 1591 to 1592.

Other than the self-serving testimonies of accused herself and Roselier C. Cruz, accused Caluag did not offer strong and solid evidence to overcome the evidence of the prosecution.

Accused's counter-arguments

In her Memorandum, accused Caluag states that she may not have presented a complete defense as she failed to substantiate her expenses incidental to her sales of gold to the BSP. She could not even account for her supposed income and no satisfactory answer was offered to justify why she kept on selling gold to the BSP when in fact, as she said, she derived practically no income therefrom.

These shortcomings *per se*, however, cannot be used to convict her as the prosecution failed to prove that there was income from these transactions. The BIR did not even present accurate figures to prove the exact earnings which the accused supposedly realized. Worse, plaintiff failed to establish bad faith or malicious intent on the part of Caluag in not paying the purported taxes due on the inexistent net income.

Accused argues that no sales transactions between her and the BSP were established by the prosecution. The letters of delivery were not authenticated according to the Rules of Court and may not be admitted in evidence. Moreover, only photocopies, not original copies, of the alleged Letters of Delivery and Sale were presented by the prosecution. And despite several opportunities to do so, plaintiff still failed to produce the said original copies. Thus, Section 3(e) of Rule 131, which provides that evidence willfully suppressed would be adverse if produced, should be applied.

The prosecution likewise failed to prove the fact that there was income on the part of accused Caluag. The fact of payment to accused could have been proven by presenting either the computation sheets or computer-generated receipts, but the prosecution failed and refused to produce them, despite ample opportunities to do so.

Accused also contends that there is no willful and deliberate intention not to declare and pay taxes on her part. The fraud contemplated by law is actual, 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.

The defense allegedly proved that it was the BSP itself which informed accused Caluag and her representative that they did not have to pay taxes on their sales of gold. Accused Caluag sold gold to the BSP because of the latter's assurance that the sales were not subject to any form or taxes. Rightly or wrongly, accused believed such representations, coming as it did from the BSP, which Caluag regarded very highly of. She further proved that she continued selling to the BSP even if the income was marginal.

In addition, the prosecution allegedly failed to prove that the said income was subject to tax. And even assuming that sales of gold were proven, or admitted, income was never established, much less the exact income earned by the accused. Worse, fraud and/or deliberate intent on the part of the accused were not proven.

THE COURT'S RULING

Accused Felonila Z. Caluag is charged before this Court in the four (4) above-captioned cases for failure to file her Income Tax Returns for taxable years 2006 to 2009, in violation of the first paragraph of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 255 of the NIRC, as amended, states:

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

Based on the foregoing, the prosecution must prove the following elements beyond reasonable doubt:

1. Accused is required under the NIRC of 1997 to pay any tax, make a return, keep any 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;

2. Accused failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and

3. Accused willfully failed to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.

To secure the conviction of accused Caluag under Section 255 of the NIRC of 1997, as amended, all of the foregoing elements must be present in these consolidated cases.

Accused Caluag is required under the NIRC of 1997 to file an annual Income Tax Return.

In these consolidated cases, accused Caluag is charged with her alleged failure to file her annual income tax returns for taxable years 2006 to 2009.

Accused Caluag's duty to file an annual income tax return is based on Sections 51 and 74 of the NIRC of 1997, as amended. The pertinent portions of the said provisions read:

> "**SEC. 51.** ***Individual Return***. –
>
> (A) Requirements. -
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) Every Filipino citizen residing in the Philippines;
>
> xxx xxx xxx
>
> (4) The income tax return shall be filed in duplicate by the following persons:

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

xxx xxx xxx

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

(C) When to File. –

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

xxx xxx xxx

SEC. 74. *Declaration of Income Tax for Individuals. —*

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

Commissioner."

In this case, accused Caluag admitted that she sold refined gold to the Bangko Sentral ng Pilipinas (BSP) on various dates in 2006, 2007, 2008, and 2009.[82] She likewise admitted having executed Letters of Delivery and Sale covering her sale of gold to the BSP on various dates in 2006, 2007, 2008, and 2009.[83]

Aside from this admission, the prosecution was also able to present a Certification dated April 1, 2011,[84] stating that the total annual gold sales of accused Caluag to the BSP for the years 2005 to 2009 are as follows:

YEAR	CONTENTS PAID (IN TR. OZ.)	VALUE	REFINING CHARGES	NET PAYMENT
2005	10,032.456	₱243,431,570.18	₱344,439.48	₱243,087,130.70
2006	9,403.056	286,967,743.48	324,034.40	286,643,709.08
2007	6,589.311	210,542,016.79	228,497.21	210,313,519.58
2008	8,895.066	346,840,356.26	314,355.28	346,526,000.98
2009	4,249.120	186,482,588.24	147,066.34	186,335,521.90
TOTAL	39,169.009	₱1,274,264,274.95	₱1,358,392.71	₱1,272,905,882.24

It is interesting to note that accused Caluag never disputed that her transactions with the BSP resulted to net payments amounting to hundreds of millions. In fact, upon clarificatory questions propounded by the Court, accused Caluag testified that she earns an estimate of ₱1,000.00 as net profit for every 2 kilos of gold sold,[85] which is approximately ₱4,000.00 per week, or more than ₱10,000.00 per month.[86] In fact, considering that she sold ₱346,000,000.00 worth of gold in 2008, she admitted to somehow having earned substantial income.[87]

Clearly, accused Caluag earned income from her transactions with the BSP, and regardless of how much that income was, she was duty bound to file her annual income tax return with the BIR. Hence, the first element of the crime charged, requiring accused Caluag to file an annual income tax return, is clearly satisfied.

Accused failed to file her annual Income Tax Returns.

[82] Paragraph 4, Admitted Facts, Pre-Trial Order, Docket – Vol. III (CTA Crim. Case No. O-345), p. 1591.
[83] Paragraph 5, Admitted Facts, Pre-Trial Order, Docket – Vol. III (CTA Crim. Case No. O-345), p. 1591.
[84] Exhibit "P-5," Docket – Vol. II (CTA Crim. Case No. O-345), p. 1060.
[85] TSN dated May 31, 2017, pp. 34, 49 to 50.
[86] TSN dated May 31, 2017, pp. 50 to 51.
[87] TSN dated May 31, 2017, pp. 51 to 54.

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In this case, the prosecution was able to prove that accused Caluag failed to file any income tax returns for the taxable years in question. Full credence is given by this Court to the Certification dated November 4, 2014,[88] issued by Gemma H. De Ocampo, OIC-Chief of the Collection Section of the BIR, stating that there are no records on file showing that accused Caluag filed her ITR for taxable years 2005 to 2009. Likewise, this Court gives weight to the Certification dated April 14, 2011,[89] issued by Revenue District Officer Teogenes T. Abrigo, Jr., stating that based on its ITS generated registration with RDO No. 25B, accused Caluag is registered for ONETT, effective September 20, 2000, and that there is no record on file to show that she filed annual ITRs and VAT Returns for years 2005 to 2009.

In contrast to the foregoing evidence of the prosecution, accused Caluag never denied or refuted the allegation that she did not file any ITR for the taxable years 2006, 2007, 2008 and 2009. Thus, the second element of the crime charged has been sufficiently proven by the prosecution in this case.

The prosecution failed to prove beyond reasonable doubt that the failure of accused Caluag to file the required returns was willful.

The presence of the first two elements, however, does not warrant a conviction, unless the prosecution is able to prove, beyond reasonable doubt, that the act of accused Caluag, in failing to file her income tax returns for taxable years 2006 to 2009, was done *willfully,* with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

According to Black's Law Dictionary,[90] the term "willful" is defined as:

> "An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law xxx xxx xxx.

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[88] Exhibit "P-4," Docket – Vol. III (CTA Crim. Case No. O-345), p. 1453.
[89] Exhibit "P-2," Docket – Vol. II (CTA Crim. Case No. O-345), p. 1057.
[90] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> Act is ' willful ' within meaning of section *(sic)* of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.,* C.A.R.I., 504 F.2d 1306, 1315."

Moreover, 'willfulness' in tax crimes has been simply defined as:

> "Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[91]

At this juncture, it bears stressing that Section 2 of Rule 133 of the Revised Rules on Evidence specified the requisite quantum in criminal cases, to wit:

> "SEC. 2. Proof beyond reasonable doubt. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This rule places upon the prosecution the burden of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the

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[91] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.

right of an accused to be "presumed innocent until the contrary is proved." Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution. Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.[92]

In this case, the prosecution's evidence failed to prove that the non-filing by accused Caluag of the required income tax returns for the subject taxable years was willful or intentional. The records are bereft of any evidence showing that the non-filing of the said returns was the result of a deliberate act on the part of accused Caluag.

In the case of *Nilo Macayan, Jr. y Malana vs. People of the Philippines,*[93] the Supreme Court held that:

> "What is crucial, however, this being a criminal case, is for the prosecution to establish the guilt of an accused on the strength of its own evidence. Its case must rise on its own merits. The prosecution carries the burden of establishing guilt beyond reasonable doubt; it cannot merely rest on the relative likelihood of its claims. Any *lacunae* in its case gives rise to doubt as regards the 'facts necessary to constitute the crime with which an accused is charged.'"

Thus, with the failure of the prosecution to present any evidence to prove that the accused Caluag *willfully* failed to file her income tax returns, resulting in her failure to pay income taxes due from her for taxable years 2006, 2007, 2008 and 2009, this Court is duty bound to acquit the accused.

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to her guilt. Where there is no moral certainty as to her guilt, accused must be acquitted even though her innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt"[94], which the Court finds wanting in this case.

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[92] *Nilo Macayan, Jr. y Malana vs. People of the Philippines,* G.R. No. 175842, March 18, 2015.
[93] *Ibid.*
[94] *People of the Philippines vs. Asis,* 439 Phil. 707, 727-728 (2002), as cited in *Nilo Macayan, Jr. y Malana vs. People of the Philippines, supra.*

Accused Caluag is civilly liable for income taxes due for taxable years 2006, 2007, 2008 and 2009.

Anent the civil action for the recovery of accused's civil liability to pay taxes and penalties, the same is deemed jointly instituted in the instant criminal actions.[95] Thus, the judgment in a criminal case shall not only impose the penalty, but shall also order payment of the taxes subject of the criminal case.[96]

In this case, notwithstanding the finding that accused Caluag is not guilty of a violation of Section 255 of the NIRC, as amended, she is still civilly liable for taxes resulting from her failure to file the requisite income tax returns for taxable years 2006 to 2009.

This is so because the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt, as only preponderance of evidence is required in civil cases.[97]

Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence'. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[98]

In this case, the prosecution presented the Certification dated April 1, 2011,[99] stating that the total annual gold sales of accused Caluag to the BSP for the years 2005 to 2009 are as follows:

YEAR	CONTENTS PAID (IN TR. OZ.)	VALUE	REFINING CHARGES	NET PAYMENT
2005	10,032.456	₱243,431,570.18	₱344,439.48	₱243,087,130.70
2006	9,403.056	286,967,743.48	324,034.40	286,643,709.08
2007	6,589.311	210,542,016.79	228,497.21	210,313,519.58
2008	8,895.066	346,840,356.26	314,355.28	346,526,000.98
2009	4,249.120	186,482,588.24	147,066.34	186,335,521.90
TOTAL	39,169.009	₱1,274,264,274.95	₱1,358,392.71	₱1,272,905,882.24

In support thereof, the prosecution likewise presented

[95] Section 11, Rule 9, Revised Rules of the Court of Tax Appeals (RRCTA).
[96] Section 205 (b), NIRC of 1997, as amended.
[97] *Emilia Lim vs. Mindanao Wines & Liquor Galleria,* G.R. No. 175851, July 4, 2012.
[98] *Emilia Lim vs. Mindanao Wines & Liquor Galleria, supra.*
[99] Exhibit "P-5," Docket – Vol. II (CTA Crim. Case No. O-345), p. 1060.

Computation Sheets for 2006 to 2009,[100] which was used as the basis in preparing the abovementioned Certification dated April 1, 2011.

On the basis of the foregoing documents, the BIR computed accused Caluag's income tax due, as stated in the PAN,[101] FLD and Audit Result/Assessment Notices,[102] as follows:

Taxable Year	Undeclared Income	Personal Exemption	Taxable Income	Deficiency Income Tax
2006	₱286,643,709.08	₱20,000.00	₱286,623,709.08	₱91,684,586.91
2007	210,313,519.58	20,000.00	210,293,519.58	67,258,926.27
2008	346,526,000.98	35,000.00	346,491,000.98	110,842,120.31
2009	186,335,521.90	50,000.00	186,285,521.90	₱59,576,367.01
TOTAL	₱1,029,818,751.54	₱125,000.00	₱1,029,693,751.54	₱329,362,000.50

In stark contrast to the evidence presented by the prosecution, accused Caluag offered no evidence to sustain her defense. Aside from her self-serving testimony, insisting that all her receipts were lost during the flood caused by typhoon *Ondoy*,[103] and faulting the BIR for using her gross income as the basis for the assessment,[104] accused Caluag made no effort to substantiate her claims as regards her civil liability to pay income taxes due for taxable years 2006 to 2009.

It should be stressed that Section 34 (A) (1) (b) of the NIRC of 1997, as amended, emphasizes the importance of substantiating the taxpayer's expenses or deductions from gross income, to wit:

> "**SEC. 34. *Deductions from Gross Income.*** — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> ***(A) Expenses. —***
>
> *(1) Ordinary and Necessary Trade, Business or*

[100] Exhibits "P-138" to "P-141," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1739 to 1747.
[101] Exhibit "P-352," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1708 to 1710.
[102] Exhibit "P-353," Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1711 to 1718.
[103] TSN dated May 31, 2017, pp. 13 to 14, 17, and 46.
[104] Exhibit "A-7," Judicial Affidavit of Felonila Z. Caluag, Docket – Vol. III (CTA Crim. Case No. O-345), pp. 1899, 1906 to 1908.

> *Professional Expenses.* —
>
> xxx xxx xxx
>
> *(b) Substantiation Requirements.* — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

In the absence of compliance with the foregoing provision, and without the presentation of any other credible and sufficient evidence, as to the amount of expenses actually incurred by accused Caluag in her transactions with the BSP, there can be no allowable deductions in this case. Hence, the computations made by the BIR, as appearing in the PAN and FLD remain valid.

In the case of *Commissioner of Internal Revenue vs. General Foods (Phils.), Inc.*,[105] the Supreme Court said:

> "It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.
>
> Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed."

Based on the foregoing, it is clear that greater weight should be accorded to the prosecution's evidence, as it is more worthy of belief than that which is offered in opposition thereto.

Accused Caluag is likewise liable for penalty and interest, in addition to the basic taxes due.

[105] G.R. No. 143672, April 24, 2003.

Anent accused Caluag's civil liability, Section 248 of the NIRC of 1997, as amended, states that there is a twenty five percent (25%) penalty in addition to the basic taxes due, to wit:

> "**SEC. 248. *Civil Penalties* –**
>
> xxx xxx xxx
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; xxx xxx."

In addition, deficiency and delinquency interests shall be imposed up to December 31, 2017, according to original provisions of Sections 249 (B) and 249 (C) (1) of the NIRC of 1997, as amended, to wit:

> "**SEC. 249. *Interest.* –**
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> (1) The amount of tax due on any return required to be filed;
>
> xxx xxx xxx
>
> there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

The rate of delinquency interest to be imposed, however, is modified with the passage of R.A. No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law). Under the said law, which took effect on January 1, 2018, Section 249 of the NIRC of 1997 was amended to read as follows:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid**: Provided, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously**.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* xxx xxx xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments are noted:

1. The interest rate is reduced to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."

   Currently, the legal interest rate is 6%,[106] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under Section 249 of the NIRC of 1997.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of

[106] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.

interest penalties under the NIRC of 1997 has been effectively eliminated.

3. The period for the application of deficiency interest is modified to run from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance of a notice and demand by the CIR.

   It bears noting that under the NIRC of 1997, the deficiency interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof and is not interrupted by the issuance of a notice or demand from the CIR.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[107] There being no clear legislative intent to retroactively apply the provisions of the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[108]

Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied to this case.

Thus, as of January 1, 2018, the interests to be imposed must already be 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

To summarize, in addition to the basic taxes due, the following are likewise imposed:

1) A twenty five percent (25%) penalty, in accordance with Section 248 (A) (1) of the NIRC of 1997, as amended;

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[107] *BPI Leasing Corporation vs. Court of Appeals, et al.*, G.R. No. 127624, November 18, 2003.
[108] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 3008.

2) Deficiency interest at the rate of twenty percent (20%) per annum, from the date prescribed for payment until **<u>December 31, 2017</u>**, pursuant to original text of Section 249(B) of the NIRC of 1997, as amended;

3) Delinquency interest at the rate of twenty percent (20%) per annum, from the date prescribed for payment until **<u>December 31, 2017</u>**, pursuant to original text Section 249(C)(1) of the NIRC of 1997, as amended; and

4) Delinquency interest at the rate of 12% on the total unpaid amount from **<u>January 1, 2018</u>**, until the same is fully paid, pursuant to Section 249 of the NIRC of 1997, as amended by by the TRAIN Law.

WHEREFORE, in light of the foregoing, accused Felonila Z. Caluag is hereby **ACQUITTED in CTA Crim. Case Nos. 0-345, 0-346, 0-347 And 0-348** for failure of the prosecution to prove her guilt beyond reasonable doubt.

Accused Felonila Z. Caluag, however, is **ORDERED TO PAY** the total amount of Four Hundred Eleven Million Seven Hundred Two Thousand Five Hundred Pesos and Sixty Three Centavos (₱411,702,500.63) for taxable years 2006 to 2009, inclusive of the 25% penalty imposed under Section 248 (A) (1) of the NIRC of 1997, as amended, computed as follows:

Taxable Year	BASIC INCOME TAX DUE	25% Penalty	TOTAL	Date Prescribed for Payment
2006	₱91,684,586.91	₱22,921,146.73	₱114,605,733.64	April 15, 2007
2007	67,258,926.27	16,814,731.57	84,073,657.84	April 15, 2008
2008	110,842,120.31	27,710,530.08	138,552,650.39	April 15, 2009
2009	59,576,367.01	14,894,091.75	74,470,458.76	April 15, 2010
TOTAL	₱329,362,000.50	₱82,340,500.13	₱411,702,500.63	

In addition, accused Felonila Z. Caluag is **ORDERED TO PAY** the following deficiency and delinquency interest, computed in accordance with the provisions of Section 249 of the NIRC of 1997, in its original text and as amended by RA No. 10963 (TRAIN law), *viz.*:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax from the date prescribed for payment (as above identified) until **<u>December 31, 2017;</u>**

(b) Delinquency interest at the rate of 20% per annum on the total amount of Four Hundred Eleven Million Seven Hundred Two

Thousand Five Hundred Pesos and Sixty Three Centavos (₱411,702,500.63), and on the 20% deficiency interest which have accrued as stated in (a) hereof, computed from the date prescribed for payment (as above identified) until **December 31, 2017;** and

(c) Delinquency interest at the rate of 12% on the total unpaid amount [basic taxes, surcharges, and interests computed on (a) and (b) above] from **January 1, 2018**, until the same is fully paid.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

With Concurring & Dissenting Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,

CTA CRIM. CASE Nos. O-345, O-346, O-347, and O-348

- versus -

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

FELONILA Z. CALUAG, Accused.

Promulgated:

SEP 05 2018 ; 8:45 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that accused Felonila Z. Caluag is civilly liable to pay deficiency income tax for taxable years 2006 to 2009.

I submit, however, that in addition to her basic deficiency income tax liability, accused Caluag is liable to pay the 50% penalty imposed under Section 248(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, plus deficiency and delinquency interests computed in accordance with Section 249 of the NIRC of 1997, as amended by Republic Act No. 10963 (TRAIN Law).

Imposable Interests

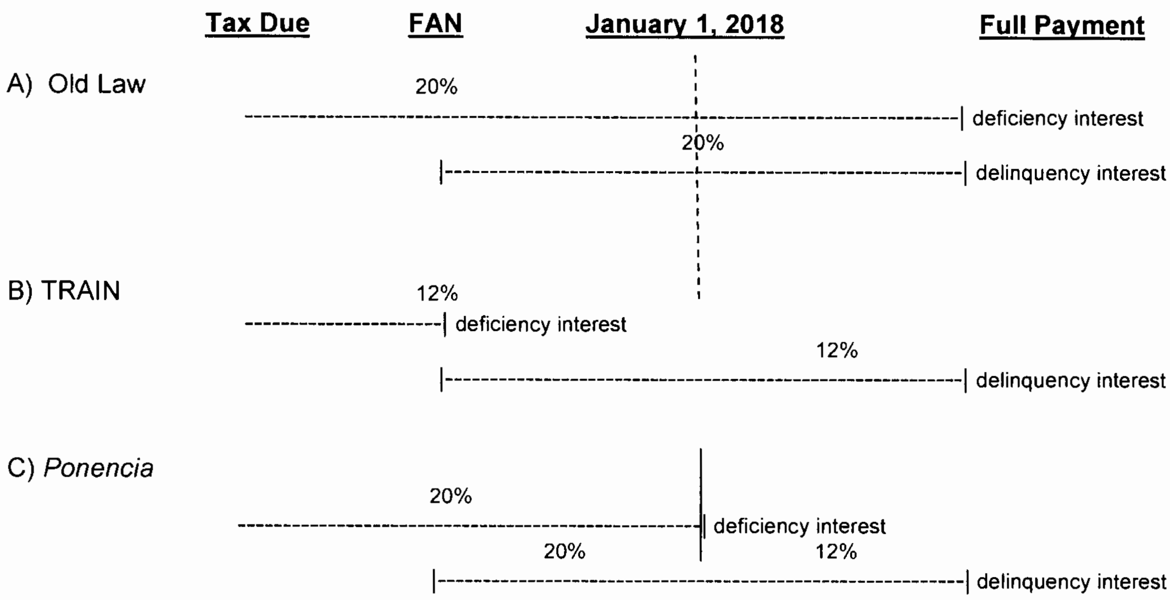
Anent the imposition of deficiency and delinquency interests, in view of the effectivity of the TRAIN Law on January 1, 2018, I submit that the imposable delinquency interest and deficiency interest on accused's deficiency income tax liability should be at the rate of 12%, pursuant to Section 249 of the NIRC of 1997, as amended by the Train Law.

It must be emphasized that deficiency interest and delinquency interest on tax are based on law. When the law is amended during the pendency of a case, and there being a specific provision as to when the amendment becomes effective, there is no reason for the Court not to apply the law as amended.

Parenthetically, the TRAIN Law made a substantial modification on the rate of interest and the mode by which interest may be computed. A comparison of the provision of Section 249 on interest under the NIRC and its amendment under the TRAIN Law would readily highlight the radical incongruity, *viz.*:

Section 249, NIRC of 1997, as amended	**Section 249, NIRC, as amended by the TRAIN Law**
Deficiency Interest **20% per annum**, from the date prescribed for its payment until the full payment thereof	**Deficiency Interest** **12% per annum**, from the date prescribed for its payment until: (i) the full payment thereof; **or (ii) upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier** Provided that **in no case shall the deficiency and delinquency interest be imposed simultaneously**
Delinquency Interest **20% per annum**, until fully paid	**Delinquency Interest** **12% per annum**, until fully paid

The comparative provision of Section 249, before and after its amendment by the TRAIN Law vis-à-vis the imposition of interest in the *ponencia,* is graphically shown hereunder:



From the foregoing, it is readily apparent that Section 249 of the NIRC of 1997, as amended by the TRAIN Law, incorporates three (3) provisos that cannot be applied without setting aside the original version of Section 249 of the NIRC of 1997:

> *First*, the TRAIN Law prescribes 12% interest, which is double the legal interest rate for loans or forbearance of money, while the old provision prescribes the rate of 20% per annum;
>
> *Second*, under the TRAIN Law, the deficiency interest is computed from date prescribed for its payment: (i) until the full payment thereof; or **(ii) until the issuance of a notice and demand by the CIR, whichever comes earlier**. The old version confined its computation strictly from the date prescribed for its payment until the full payment thereof; and
>
> *Third*, the TRAIN Law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows.

In other words, since the TRAIN Law clearly **became effective on January 1, 2018**, there can be no logical and practical approach than to apply it in accordance with its clear language, Thus, the computation of **deficiency interest** should now be in accordance with the TRAIN Law, that is -- **at 12% and only until demand; while delinquency interest at the rate also of 12% should be from the due date appearing in the notice of demand until full payment.**

In computing deficiency and delinquency interests, the provisions of the TRAIN Law are not being applied retroactively. At the time that accused Caluag was adjudged to be liable to pay the deficiency taxes with corresponding deficiency interest and delinquency interest, the prevailing provisions are that of the TRAIN Law which **specifically states the rate of interests, the manner of computation and the proscription against the simultaneous imposition of deficiency and delinquency interests**. Thus, the Court has no recourse but to apply the same. To be sure, **there is nothing in the TRAIN Law which provides that the rate and manner of computing deficiency and delinquency interests shall be applied only to assessments issued after TRAIN Law's effectivity. It is clearly and plainly provided that upon TRAIN Law's effectivity, "in no case shall the deficiency and delinquency interests be imposed simultaneously."**

In view of the effectivity of the TRAIN Law on January 1, 2018, **the amendatory provisions of the TRAIN Law on the imposition of deficiency and delinquency interests must be applied in determining the amount of accused's tax liability.**

Criminal Liability

With regard to accused Caluag's criminal liability, she is charged under Section 255 of the NIRC of 1997, as amended, for failure to file a return. The elements of violation of Section 255 of the NIRC of 1997, as amended, for failure to make or file a return, are as follows:

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

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

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

I concur with the *ponencia's* finding that: (i) accused Caluag is required under the NIRC of 1997, as amended to file Annual Income Tax Returns (ITRs) for the years 2006 to 2009; and, (ii) accused Caluag failed to file her Annual ITRs for the years 2006 to 2009.

The *ponencia*, however, found that accused Caluag's failure to file the required Annual ITRs for the years 2006 to 2009 was not willful. On this aspect, I am constrained to withhold my assent.

I submit that, anent the third element of "willfulness", the prosecution has sufficiently proven beyond reasonable doubt that accused Caluag willfully failed to make or file a return.

Willful in the tax crimes statutes means voluntary, intentional violation of a known legal duty, and bad faith or bad purpose need not be shown.[1] An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.[2]

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by <u>circumstantial evidence alone</u>.[3]

For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the respondents were probably guilty of the crime and at the same time inconsistent with the hypothesis that they were innocent, and with every rational hypothesis except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[4]

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[1] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116,85-1 USTC 9178 (CA7 1985), in which the Court, citing U.S. v. Moore, 627 F2d 830 (CA7 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.
[2] Black's Law Dictionary, 5th ed., p. 1434.
[3] United States v. Grumka, 728 F.2d 794, 796-97 (6th Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); United States v. Marabelles, 724 F.2d 1374, 1379 (9th Cir. 1984).
[4] Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban, G.R. No. 191567, March 20, 2013

Accused Caluag claims that she did not willfully and deliberately fail to file her Annual ITRs for the years 2006 to 2009. She insists that it was the Bangko Sentral ng Pilipinas (BSP) itself which informed her and her representative that the sale of gold to BSP is not subject to taxes. She also avers that she continued to sell gold to BSP because of the latter's assurance that the sale were not subject to tax. Thus, there was no willful or intentional failure on her part to file her Annual ITRs for the years 2006 to 2009.

Accused Caluag's contention cannot be sustained.

Filing of return and payment of taxes are not novel to accused Caluag. Records reveal that accused Caluag was in fact registered with the BIR as a One-Time Transaction Taxpayer (ONETT), albeit not involving the gold transactions subject of the present criminal cases. Nonetheless, this circumstance at the very least is indicative of knowledge or awareness on the part of accused Caluag that transaction generating income or gain is subject to payment of tax with corresponding filing of an appropriate tax return. The Court will then be extremely naive to accept the proposition that accused did not "willfully fail to file return" when she patently gained income from recurring business transactions spanning from 2006 to 2009. The filing of an Annual ITR is something that is not unknown or unusual to ordinary taxpayers.

Besides, accused Caluag's sole reliance on the BSP's alleged representation that her sale of gold to BSP is not subject to taxes is implausible to support her professed innocence. For one, accused Caluag never bothered to present any competent and reliable evidence confirming that a BSP official indeed informed her that the income from the sales of gold is not subject *specifically* to income tax and that she is not required to file her Annual ITRs. For another, no trustworthy document was ever presented from which the purported advice by BSP may be based or elicited. Bare allegations, unsubstantiated by competent evidence, have no probative value.[5]

As an experienced businesswoman, accused Caluag is presumed to take ordinary care of her concern.[6] Considering the magnitude of the transactions that accused Caluag had with BSP *vis-à-vis* the fact that the BSP is not the government entity in charge of

[5] LNS International Manpower Services vs. Armando C. Padua, Jr., G.R. No. 179792, March 5, 2010.
[6] Section 3(d), Rule 131 of the Rules on Evidence.

collecting national internal revenue taxes, accused Caluag should have exercised ordinary care and prudence by confirming or validating with the BIR whether or not her sales of gold to BSP are not subject to tax. Such neglect or omission obviously partakes the nature of "willful blindness" or "conscious avoidance" to file her ITRs and report the income derived from her sales of gold to BSP.

As aforediscussed, "willfulness" in the commission of a crime is a state of mind. It is foolhardy for the Court to expect direct proof thereof - - an evidence that may exist only in an instance where the accused pleads guilty. In this case, I respectfully submit that evidentiary facts and circumstances (that is - - (i) familiarity with tax laws as registered ONETT taxpayer; (ii) magnitude and regularity of transactions; and, (iii) absence of any effort to confirm from the BIR the tax-exempt status of the transaction) have proved beyond reasonable doubt that accused Caluag willfully failed to file her Annual ITRs for the years 2006 to 2009.

All told, I **VOTE** to:

(i) **CONVICT** accused Felonila Z. Caluag for violation of Section 255 of the NIRC of 1997, as amended, and sentence her to suffer a penalty of five (5) years imprisonment and order her to pay a fine in the amount of ₱10,000.00, for each CTA Crim. Case Nos. O-345, O-346, O-347 and O-348, the penalty of imprisonment to be served successively pursuant to Article 70 of the Revised Penal Code; with subsidiary imprisonment in case she has no property with which to satisfy the fine, or is unable to pay such fine, pursuant to Section 280 of the NIRC, of 1997, as amended; and,

(ii) **ORDER** accused Felonila Z. Caluag to **PAY** the Bureau of Internal Revenue the amount of **₱494,043,000.75**, representing basic deficiency income tax for taxable years 2006 to 2009, and the *50% penalty* imposed under Section 248 (B) of the NIRC of 1997, as amended,[7] ***and*** **to PAY the Bureau of Internal Revenue the following:**

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TAXABLE YEAR	BASIC TAX	50% PENALTY	TOTAL
2006	₱ 91,684,586.91	₱ 45,842,293.46	₱ 137,526,880.37
2007	67,258,926.27	33,629,463.14	100,888,389.41

a. **Deficiency interest** at the rate of twelve percent (12%) per annum on the basic deficiency income tax, computed from the date prescribed for payment as indicated below until December 10, 2014,[8] the date of accused Felonila Z. Caluag's receipt of the Final Assessment Notice and Formal Letter of Demand, dated December 4, 2014, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963:

TAXABLE YEAR	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
2006	₱ 91,684,586.91	April 15, 2007
2007	67,258,926.27	April 15, 2008
2008	110,842,120.31	April 15, 2009
2009	59,576,367.01	April 15, 2010
TOTAL	₱ 329,362,000.50	

b. **Delinquency interest** at the rate of 12% per annum on the total amount of **₱494,043,000.75**, and on the 12% deficiency interest which have accrued as aforestated in item (a) above, computed from January 9, 2015[9] until the amount is fully paid, pursuant to Section 249 (C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

2008	110,842,120.31	55,421,060.16	166,263,180.47
2009	59,576,367.01	29,788,183.51	89,364,550.52
TOTAL	₱329,362,000.50	₱164,681,000.25	₱494,043,000.75

[8] Exhibit "P-353" shows accused Felonila Z. Caluag's receipt of the FAN on December 10, 2014, as evidenced by her signature.
[9] The due date appearing in the Assessment Notices for income tax, all dated December 4, 2014, which is thirty (30) days from receipt of notice on December 10, 2014.