REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS, Petitioners,	**CTA EB CRIM. No. 054** (CTA Crim. Case Nos. O-522, O-523, O-525, & O-554)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
PEOPLE OF THE PHILIPPINES, Respondent.	***Promulgated:*** OCT 24 2019 4:16 p.m.

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DECISION

UY, J.:

The *Petition for Review*[1] filed on July 3, 2018, seeks to reverse and set aside the Decision dated March 12, 2018, and Resolution dated May 30, 2018, both promulgated by the Second Division of this Court (Court in Division) in CTA Crim. Case Nos. O-522, O-523, O-525, and O-554, entitled, *"People of the Philippines, Plaintiff, vs. Kingsam Express Incorporation and Samuel S. Santos, Accused,"* the dispositive portions of which read:

Decision dated March 12, 2018:

> "**WHEREFORE,** premises considered, the Court rules as follows:

[1] Docket, pp. 1 to 45.

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

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

3. In CTA Crim. Case No. O-525, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2009 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

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

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

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

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

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

4. In CTA Crim. Case No. O-554, a fine of **ONE HUNDRED THOUSAND PESOS (Php100,000.00)** for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2008.

SO ORDERED."

Resolution dated May 30, 2018:

"**WHEREFORE,** premises considered, the Motion for Reconsideration (against the Decision Dated 12 March 2018) is hereby **DENIED** for lack of merit. Accordingly, the **assailed *Decision*** dated March 12, 2018 is hereby **AFFIRMED.**

SO ORDERED."

THE FACTS

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

CTA Crim. Case No. O-522

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

CONTRARY TO LAW."[2]

CTA Crim. Case No. O-523

"That on or about the 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php1,623,734.60 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2009, to the damage and prejudice of the government in the amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest,, representing accused's income tax deficiency as of the time of the filing of the complaint.

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[2] Amended Information, Docket (CTA Crim. Case No. O-522), Vol II, pp. 496-498.

NA

CONTRARY TO LAW."[3]

CTA Crim. Case No. O-525

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

CONTRARY TO LAW."[4]

CTA Crim. Case No. O-554

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

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[3] Amended Information, Docket (CTA Crim. Case No. O-523), pp. 276-278
[4] Amended Information, Docket (CTA Crim. Case No. O-523), pp. 287 to 289.

representing accused's income tax deficiency as of the time of the filing of the complaint.

CONTRARY TO LAW."[5]

Petitioner Samuel S. Santos was arraigned on July 4, 2016 for the consolidated cases, CTA Crim. Case Nos. O-522, O-523, and O-525, where he entered a plea of "NOT GUILTY." The Preliminary Conference for the said cases were conducted on August 8, 2016.

Additionally, an Information was filed against the petitioner Kingsam Express Incorporation and Samuel S. Santos under CTA Crim. Case No. O-554 for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended on May 4, 2016, Finding probable cause against the petitioners, the Court in Division issued Warrants of Arrest on June 8, 2016. On August 24, 2016, petitioner Santos was arraigned for CTA Crim. Case No. O-554, where he entered a plea of "NOT GUILTY."

On September 19, 2016, CTA Crim. Case No. O-554 was consolidated with CTA Crim. Case Nos. O-522, O-523, and O-525. Pre-trial was conducted on October 12, 2016 and a Pre-Trial Order was issued on October 19, 2016.

During trial, the prosecution presented its lone witness, Medardo Tipon. On January 30, 2017, the prosecution submitted its Formal Offer of Prosecution's evidence, which was resolved in the Resolution dated March 28, 2017.

On April 3, 2017, herein petitioners' motion for leave of court to file Demurrer to Evidence was granted by the Court in Division on May 4, 2017. However, the demurrer to evidence was denied for lack of merit in the Resolution dated June 20, 2017.

Thus, petitioners presented defense evidence and called to the witness stand the following witnesses: Samuel S. Santos, and Benigno M. Cubacub, Jr.

On August 22, 2017, petitioners filed their Formal Offer of Evidence, wherein some exhibits were partially admitted, while several exhibits were denied admission.

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[5] Information, Docket (CTA Crim. Case No. O-554), pp. 6 to 8.

On October 27, 2017, the respondent filed its Memorandum, while herein petitioners filed their Memorandum (for accused), through registered mail on November 21, 2017, which was received by the Court in Division on December 13, 2017. Thus, on December 11, 2017, the consolidated criminal cases were deemed submitted for decision.

In the assailed Decision dated March 12, 2018, petitioners were found guilty beyond reasonable doubt, for violating Sections 254 and 255 of the NIRC of 1997, as amended, and were sentenced as follows:

Accused Samuel S. Santos			
Case No.	*Violation*	*TY*	*Penalty*
O-522	Sec. 254	2008	Indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine
O-523	Sec. 255	2009	Indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine
O-525	Sec. 254	2009	Indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine
O-554	Sec. 255	2008	Indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years as maximum, and pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine
Accused Kingsam Express Incorporation			
Case No.	*Violation*	*TY*	*Penalty*
O-522	Sec. 254	2008	Pay a fine of Php100,000.00
O-523	Sec. 255	2009	Pay a fine of Php100,000.00
O-525	Sec. 254	2009	Pay a fine of Php100,000.00
O-554	Sec. 255	2008	Pay a fine of Php100,000.00

Aggrieved, petitioners filed a "Motion for Reconsideration (Against the Decision dated 12 March 2018" on March 27, 2018. The prosecution filed its "*Comment and/or Opposition to the Motion for Reconsideration dated March 25 filed by the Accused*" on April 17, 2018."

In the assailed Resolution dated May 30, 2018,[6] the Court in Division denied said "*Motion for Reconsideration*" for lack of merit.

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[6] EB Docket, pp. 152 to 172.

Undaunted, petitioner filed the instant *Petition for Review,*[7] on July 3, 2018, praying to reverse and set aside the Decision dated March 12, 2018, and Resolution dated May 30, 2018, and for the acquittal of accused.

In the Resolution[8] dated August 9, 2018, petitioners were given a period of ten (10) days to submit the following : (a) proof of authority of the filing officer to sign the verification and certification against forum shopping on behalf of the corporation; and (b) requisite proof of service of the Petition for Review to the Solicitor General, in accordance with Section 13, Rule 13 of the 1997 Rules of Civil Procedure. Pursuant thereto, petitioners filed their *Compliance*[9] on September 13, 2018.

In the Resolution[10] dated October 8, 2018, petitioners were directed to submit the requisite Affidavit of Service as proof that the Solicitor General was served with a copy of the petition, within ten (10) days from notice. Petitioners filed their *Compliance*[11] on November 9, 2018.

Subsequently, without necessarily giving due course to the *Petition for Review*, the respondent was ordered by the Court *En Banc* to file its comment thereon.[12]

As per Records Verification[13] dated February 18, 2019, respondent failed to file its Comment to the *Petition for Review.* Consequently, respondent was deemed to have waived its right to file its comment, and the instant *Petition for Review* was submitted for decision on March 7, 2019.[14]

On March 18, 2019, petitioners filed a *Motion for Leave to Admit,*[15] with attached *Supplement to Petition for Review.*[16]

In view of the filing of the foregoing pleadings, this Court

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[7] EB Docket, pp. 1 to 45.
[8] EB Docket, pp. 320 to 323.
[9] EB Docket, pp. 324 to 334.
[10] EB Docket, pp. 336 to 338.
[11] EB Docket, pp. 339 to 343.
[12] Resolution dated December 3, 2018, EB Docket, pp. 345 to 346.
[13] EB Docket, p. 347.
[14] EB Docket, pp. 349 to 350.
[15] EB Docket, pp. 351 to 354.
[16] EB Docket, pp. 355 to 368.

recalled the Resolution dated March 7, 2019, which submitted this case for decision. In addition, the *Motion for Leave to Admit* was granted, and the attached *Supplement to Petition for Review* was admitted as part of the records of this case. Thereafter, the respondent was given a period of ten (10) days to file his comment to the *Supplement to Petition for Review.*[17]

Respondent filed a *Motion for Extension to File Comment to Supplement to Petition for Review.*[18] However, as per Records Verification dated June 27, 2019, respondent failed to file its Comment, despite due notice. Hence, this case was submitted for decision on July 25, 2019.[19]

THE ISSUES

"I.

WHETHER THE SECOND DIVISION OF THE COURT OF TAX APPEALS SERIOUSLY COMMITTED PROCEDURAL FLAWS IN DECIDING THE CTA CRIM. CASE NOS. O-522, O-523 & O-525, O-554;

II.

WHETHER THE SECOND DIVISION OF THE COURT OF TAX APPEALS SERIOUSLY ERRED IN FINDING HEREIN PETITIONERS GUILTY BEYOND REASONABLE DOUBT FOR ATTEMPTING TO EVADE OR DEFEAT TAXES FOR YEARS 2008 AND 2009;

III.

WHETHER THE SECOND DIVISION OF THE COURT OF TAX APPEALS SERIOUSLY ERRED IN FINDING HEREIN PETITIONERS GUILTY BEYOND REASONABLE DOUBT FOR FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION IN ITS INCOME TAX RETURNS FOR YEARS 2008 AND 2009."[20]

Petitioners' arguments:

Petitioner contends that the Second Division of this Court

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[17] Resolution dated April 10, 2019, EB Docket, pp. 375 to 376.
[18] EB Docket, pp. 379 to 381.
[19] EB Docket, pp. 390 to 391.
[20] EB Docket, p. 18.

committed procedural flaws in deciding CTA Crim. Case Nos. O-522, O-523, O-525, and O-554, considering that:

a. The Court in Division has no jurisdiction to entertain, hear, and decide the CTA Crim. Case Nos. O-522, O-523, O-525, and O-554, despite the clear allegations in the four (4) Informations that the amounts of deficiency income taxes being collected by respondent Bureau of Internal Revenue (BIR) were merely "estimates."

b. The Court in Division deprived petitioners of their constitutional right to due process, axiomatically ousting the former of its jurisdiction to entertain, hear, and decide CTA Crim. Case Nos. O-522, O-523, O-525, and O-554.

c. The prosecution failed to identify the petitioners, being the accused herein, as the offender/perpetrator of the offenses charged in the four (4) Informations.

Petitioner likewise argues the Court in Division erred in finding petitioners guilty beyond reasonable doubt for attempting to evade or defeat taxes for years 2008 and 2009, considering that:

a. The taxes for which the petitioners have allegedly willfully evaded or defeated has not been proven by the respondent as due.

b. The intent to evade tax is not presumed.

In addition, petitioners avers that the Court in Division erred in finding them guilty beyond reasonable doubt for failure to supply correct information in its Income Tax Returns for years 2008 and 2009, considering that:

a. The findings of badges of fraud were based on the presumption that petitioners falsified and used three (3) falsified Deeds of Sale in acquiring the buses.

b. Petitioners honest belief and reliance on their accountants and auditors do not amount to fraud.

c. Petitioners cannot be considered as owners of the buses at the time of its purchase in 2008 and 2009 since they did not derive any economic benefit therefrom, and the same were not traditionally delivered to them after purchase.

Finally, petitioner asserts that the BIR failed to identify the likely source of income of the accused-petitioner, as required by the "Net Worth Method." Thus, the probability that the money used to pay for the buses came from the savings of accused Santos's wife, is equal to the probability that it came from accused Kingsam's income.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

The Court in Division has jurisdiction over CTA Crim. Case Nos. O-522, O-523, O-525, and O-554.

Petitioners contend that the Court in Division has no jurisdiction to entertain, hear, and decide the CTA Crim. Case Nos. O-522, O-523, O-525, and O-554, considering the clear allegations in the four (4) Informations that the amounts of deficiency income taxes being collected by respondent Bureau of Internal Revenue (BIR) were merely "estimates."

We are not convinced.

In cases arising from violations of the National Internal Revenue Code, the jurisdiction of this Court is limited to criminal offenses where **the principal amount of taxes and fees claimed, is <u>at least</u> One Million Pesos (Php1,000,000.00), <u>exclusive of charges and penalties,</u>** as provided under Section 7 (b) (1) of Republic Act (R.A.) No. 1125,[21] as amended by R.A. No. 9282,[22] to wit:

> "**SECTION** 7. *Jurisdiction.* – The CTA shall exercise:
>
> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:

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[21] AN ACT CREATING THE COURT OF TAX APPEALS.

[22] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (1) **Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate**. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized." *(Emphasis supplied.)*

Likewise, Section 3 (b) (1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, enumerates the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

> "**SECTION 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> xxx xxx xxx
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) **Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; x x x." *(Emphasis supplied.)*

Bearing in mind therefore that the jurisdiction of a court over a criminal case is determined by the allegations in the Complaint or Information,[23] it is necessary that the Information filed with this Court clearly state that the **principal amount of taxes and fees claimed, is *at least* One Million Pesos (Php1,000,000.00), and that the same is *exclusive of charges and penalties***.

In this case, a perusal of the Informations in the subject criminal cases, clearly show that the prosecution alleged with sufficient clarity, that the principal amount of taxes claimed is at least One Million Pesos, and that the same is *exclusive* of surcharge and interest. For easy reference, the accusatory portion of the Information for CTA Criminal Case Nos. O-522, O-523, O-525, and O-554 are quoted hereunder, to wit:

CTA Crim. Case No. O-522

> "That on or about 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under declare the corporation's income for taxable year 2008, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the amount of Four Million Ninety Five Thousand Pesos (Php4,095,000.00) exclusive of surcharge and interest, as of the time of the filing of the complaint, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."[24]

CTA Crim. Case No. O-523

> "That on or about the 15th day of April 2010, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam

[23] *Hector Treñas vs. People of the Philippines*, G.R. No. 195002, January 25, 2012, citing *Isip vs. People,* G.R. No. 170298, 26 June 2007, 525 SCRA 735; *Teofilo Evangelista vs. People of the Philippines,* G.R. No. 163267, May 5, 2010; *Ramil P. Ortiz vs. Court of Appeals,* G.R. No. 157370, June 8, 2007, citing *Macasaet vs. People*, G. R. No. 156747, February 23, 2005, 452 SCRA 255.
[24] Amended Information, Docket (CTA Crim. Case No. O-522), Vol II, pp. 496-498.

Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php1,623,734.60 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2009, to the damage and prejudice of the government in the amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest,, representing accused's income tax deficiency as of the time of the filing of the complaint.

CONTRARY TO LAW."[25]

CTA Crim. Case No. O-525

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

CONTRARY TO LAW."[26]

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[25] Amended Information, Docket (CTA Crim. Case No. O-523), pp. 276-278
[26] Amended Information, Docket (CTA Crim. Case No. O-523), pp. 287 to 289.

CTA Crim. Case No. O-554

> "That on or about the 15th day of April 2009, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2008 by making it appear that the corporation's income/revenue for taxable year 2008 was in the amount of Php1,212,773.00 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php13,650,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2008, to the damage and prejudice of the government in the amount of Four Million Ninety Five Thousand Pesos (Php4,095,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.
>
> CONTRARY TO LAW."[27]

There being no showing that the allegations made in the Information with regard to the principal amount of taxes claimed was defective or unsupported by evidence, then it is clear that the Court in Division did not err when it exercised jurisdiction over the subject consolidated cases, considering that the Information for the subject cases clearly showed that it was the Court of Tax Appeals, and not the regular courts, which had jurisdiction over the subject matter.

The accused (herein petitioners) were not deprived of their constitutional right to due process in CTA Crim Case Nos. 0-522, 0523, 0525 and 0524.

Petitioners likewise argue that they were deprived of their

[27] Information, Docket (CTA Crim. Case No. O-554), pp. 6 to 8.

constitutional right to due process, considering that there was only a two (2) day difference between the date of issuance of the Letter of Authority and the filing of the Complaint before the DOJ.

We are not swayed.

At this juncture, this Court finds the need to elucidate on the difference between the due process accorded to taxpayers in criminal and civil cases, and any confusion resulting from the variance in procedure.

The provisions of the NIRC of 1997, as amended, are clear in that the BIR can exercise several options for the collection of taxes. For easy reference, Sections 205 and 222 (a) of the NIRC of 1997, as amended, are quoted hereunder, to wit:

> "**SEC. 205. *Remedies for the Collection of Delinquent Taxes.*** – The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: x x x
>
> **SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** –
>
> (a) In the case of a false and fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, **or** a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or

criminal action for the collection thereof." *(Emphasis supplied.)*

From the foregoing, it is clear that the BIR can exercise various options for the collection of taxes, such as summary administrative remedies, precipitated by the issuance of a valid assessment; <u>or</u> judicial action, whether through a civil or criminal action.

In the fairly recent case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[28] the Supreme Court expounded on the types of remedies available to the BIR for the collection of unpaid taxes, to wit:

> "The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) ***summary administrative remedies,*** such as the distraint and/or levy of taxpayer's property; and/or *(b)* ***judicial remedies,*** such as the filing of a criminal or civil action against the erring taxpayer.
>
> Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes**, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**
>
> In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. "An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential to** warrant distraint, if still feasible, and, also, to establish a cause for judicial action." The BIR may summarily enforce collection only when it has accorded the **taxpayer administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of

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[28] G.R. No. 197945, 204119 to 204120, *etseq.*July 9, 2018.

> the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
>
> xxx xxx xxx
>
> Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318 and 319(a) of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.
>
> A judicial action for the collection of a tax is begun: (a) by the **filing of a complaint** with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by **filing an answer to the taxpayer's petition for review** wherein payment of the tax is prayed for." *(Emphasis in the original.)*

On the basis of the foregoing pronouncement, it is clear that prior to the exercise of *summary administrative remedies,* the BIR must first follow the procedure for the issuance of a valid assessment against the taxpayer, as outlined in Section 228 of NIRC of 1997, as amended. Thus, to properly accord the taxpayer procedural due process, there must be strict compliance with the procedure outlined for the issuance of an assessment against the taxpayer.

On the other hand, in exercising its right to enforce the collection of taxes through <u>judicial action</u>, particularly through the filing of a criminal complaint before the DOJ, an assessment is *not* necessary.

In the case of *Quirico P. Ungab vs. Hon. Vicente N. Cusi, Jr., etc., et al.,*[29] the Supreme Court categorically stated that an assessment of a deficiency is *not* necessary to a criminal prosecution for willful attempt to defeat and evade the income tax, to wit:

> "What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal

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[29] G.R. No. L-41919-24, May 30, 1980.

> Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. **While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code**.
>
> > The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax.
> >
> > **An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax**. A crime is complete when the violator has knowingly and willfuly filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime." *(Emphasis supplied.)*

Considering that in a criminal prosecution under the Tax Code, an assessment is *not* necessary, the procedure outlined in Section 228 of the NIRC of 1997, as amended, for the issuance of an assessment, need *not* be followed as a condition *sine qua non* for the filing of a criminal action.

Corollary thereto, the case of *Lucas G. Adamson vs. Court of Appeals*,[30] is instructive, to wit:

> "The issuance of an assessment must be distinguished from the filing of a complaint. **Before an**

[30] G.R. Nos. 120935 and 124557, May 21, 2009.

> **<u>assessment is issued</u>, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted.** If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. **<u>In contrast, the criminal charge need not go through all these</u>. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.**"

As stated in the foregoing case, a criminal charge is filed directly with the DOJ. Thus, there is no need to ensure strict compliance with the procedure for the issuance of an assessment. On the contrary, the BIR is only enjoined to comply with its own procedure for the filing of criminal cases, *i.e.,* RMO No. 27-2010, for RATE cases. This is the extent of procedural due process that must be accorded to the taxpayer by the BIR.

The due process requirement, that "entails the opportunity to be heard at a meaningful time in a meaningful manner,"[31] is then complied with during the preliminary investigation before the DOJ.

To be clear, prior to the filing of the complaint and/or referral of the case to the DOJ, the taxpayer need not be consulted, as the only requirement is compliance with RMO No. 27-2010, particularly with regards to an investigation to determine if there had been a violation of the Tax Code.

However, once the complaint is filed before the DOJ, and before an Information is filed before the courts, the accused taxpayer is now accorded the opportunity to be heard, and deny or refute the accusations against him.

In this case, the filing of the Complaint before the DOJ, two (2) days after the issuance of the Letter of Authority, did not deprive the petitioners of their right to due process. Petitioners were properly

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[31] *Carlos R. Saunar vs. Executive Secretary Eduardo R. Ermita, et al.,* G.R. No. 186502, December 13, 2017.

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accorded the opportunity to be heard during the preliminary investigation before the DOJ, where they were allowed to file their counter-affidavit and submit evidence in their defense, before the prosecutor determined the existence of probable cause for purpose of filing an Information before the appropriate court.

There was sufficient compliance with RMO No. 27-2010.

In this case, petitioners argue that there was no preliminary investigation conducted, pursuant to the subject RMO, and that it was not signed by the DCIR-LIG.

We are not persuaded.

In this case, We give credence to the testimony of prosecution witness Medardo L. Tipon ("Tipon"), explaining in detail, the procedure followed in conducting the preliminary investigation.

Specifically, Tipon stated in his Judicial Affidavit,[32] that he checked the registration status of accused corporation with RDO No. 24-Valenzuela, and accessed its Annual Income Tax Returns and Financial Statements filed for taxable years 2008 to 2012. He also checked the registration with the SEC and its records with the LTO. Thereafter, he obtained the General Information Sheet for 2009, Articles of Incorporation and Certificate of Filing Amended Articles of Incorporation.

Thus, contrary to the petitioners' contentions, the investigating officers were able to conduct a preliminary investigation to establish *prima facie* evidence of fraud or tax evasion.

Anent the issue that the subject Letter of Authority lacks the signature of the DCIR-LIG, this Court finds that the same is sufficient, considering it was signed by then Commissioner Kim S. Jacinto-Henares herself.

Section B (6) of Part II of RMO No. 27-2010 states that "should the Commissioner approve a request for issuance of an LA, such approval will be communicated to the DCIR-LIG, for the preparation and issuance of the requested LA by the latter. ***All LAs issued for RATE cases shall be signed by the DCIR-LIG."***

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[32] Exhibit "P-12," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1103 to 1111.

This Court notes that LOA-211-2013-00000201 dated October 22, 2013, was not signed by the DCIR-LIG, as stated by the foregoing provision of the subject RMO. Rather, the subject LOA was signed by then Commissioner of Internal Revenue, Kim S. Jacinto-Henares.

However, it bears stressing that Section 6 (A) of the NIRC of 1997, as amended, categorically empowers the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax. Thus, even if the LOA in this case was not signed by the DCIR-LIG, by virtue of his delegated authority under RMO No. 27-2010, it is still valid, considering that it was signed by then Commissioner Kim S. Jacinto-Henares.

There was adequate identification by the prosecution of the accused in subject consolidated criminal cases as the offenders/ perpetrators of the offenses charged in the subject consolidated criminal cases.

Petitioners posit that the prosecution failed to properly identify the petitioners as the perpetrators of the offenses charged in the consolidated criminal cases.

We are not persuaded.

In the subject consolidated criminal cases, this Court *En Banc* finds that accused Samuel S. Santos stipulated on the fact that he is the same person charged in the subject consolidated criminal cases, to wit:

> "II. Statement of the Facts & Issues
>
> A. Stipulated Facts
>
> 1. Accused Samuel S. Santos is the same person being charged in the sets of Information."[33]

In addition, found in the records of these consolidated criminal cases is a document denominated ***"Identity Admission of the***

[33] Pre-Trial Order, Docket (CTA Crim. Case No. O-522), Vol. II, pp. 694 to 703.

Accused" [34] signed on July 4, 2016 by accused Samuel S. Santos, duly assisted by defense counsel, Atty. Mary Wendy A. Duran, which likewise states that he is the same accused Samuel S. Santos being charged in said consolidated criminal cases.

Moreover, this Court notes that the General Information Sheet[35] shows that accused Samuel S. Santos is listed as the President of accused Kingsam Express Incorporation.

From the foregoing, it appears that accused Samuel S. Santos was adequately identified as the responsible officer to be penalized in the subject consolidated criminal cases.

The Court in Division did not err in finding petitioners guilty beyond reasonable doubt for attempting to evade or defeat taxes for 2008 and 2009.

In the case at bar, petitioners Kingsam Express Incorporation, and Samuel S. Santos (in his capacity as the President and responsible officer of the corporation), were found guilty of violating Sections 254 and 255 of the NIRC of 1997, as amended, *viz*:

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

[34] Docket (CTA Crim. Case No. O-522), Vol. II, p. 647.
[35] Exhibit "P-2," Docket (CTA Crim. Case No. O-522), Vol. III, p. 940.

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. x x x"

In a charge for violation of Section 254 of the NIRC of 1997, as amended, the following elements must be established:

1) A tax is imposed under the NIRC, and a person, natural or juridical, is liable for that tax;

2) There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

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

Further, tax evasion connotes the integration of three factors: (1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and (3) a course of action or failure of action which is unlawful.[36]

Thus, in order to comply with the aforesaid elements, the prosecution must show that: 1) accused is a registered taxpayer in the Philippines; 2) the source of income of the accused corporation; and 3) the said income were not declared in the corresponding ITRs, ,and therefore, the necessary taxes due thereon, were not paid. These elements are indispensable to establish that there was failure to declare and pay the alleged income tax legally due for 2008 and 2009.

On the other hand, in order to prove guilt for willful failure to supply correct and accurate information under Section 255 of the

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[36] *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, September 14, 2004.

NIRC of 1997, as amended, the following elements must be present:

1. The taxpayer is required under the NIRC or its rules and regulations 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. The taxpayer failed to pay the required tax, make a return, or keep the required record, or supply the correct and accurate information; and

3. The taxpayer 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 sustain the conviction of petitioners Kingsam Express Incorporation and Samuel S. Santos under Sections 254 and 255 of the NIRC of 1997, as amended, the existence of all the foregoing elements must have been duly proven by the prosecution during the trial of the subject criminal cases filed with the Court in Division.

Kingsam Express Incorporation is mandated to file quarterly income tax returns and a final or adjustment return, while Samuel S. Santos, as its President, is the responsible officer, pursuant to Section 52 of the NIRC of 1997, as amended.

The first element of the offense charge necessitates that a tax is imposed under the NIRC, and a person, natural or juridical, is liable for that tax. Relative thereto, reference must be made to Section 52 (a) of the NIRC of 1997, as amended, to wit:

> "**SEC. 52. *Corporation Returns.*** –
>
> *(A) Requirements.* - Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income

> tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

The foregoing provision specifically outlines the duty of a corporation to file an accurate quarterly income tax return *and* final or adjustment return, and indicates the corporate officers that shall be responsible therefor.

In this case, the prosecution was able to adduce proof that accused corporation is a domestic corporation, duly organized and incorporated.[37] Being so, it is mandated to file faithfully and accurately supply the correct information in the required tax returns, and filing the same during the periods stated under the law.

As for petitioner Santos, credence is given to the General Information Sheet,[38] showing that accused Samuel S. Santos is listed as the President of petitioner Kingsam Express Incorporation. In addition, this Court notes that petitioner Santos also presented himself as the President of petitioner corporation in the ITR for 2008,[39] as well as the Deeds of Sale[40] and Contract to Sell[41] pertaining to the purchase of seven (7) King Long Model Buses in 2008.

Based on the foregoing evidence, it is clear that the first element of the crime of tax evasion under Section 254 of the NIRC of 1997, as amended, has been proven.

There was an attempt to evade or defeat any tax imposed under the NIRC of the payment thereof.

Petitioners assert that the BIR failed to identify the likely source of income of the petitioner Kingsam, stating that the probability that the money used to pay for the buses came from the savings of accused Santos' wife, is equal to the probability that it came from

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[37] Exhibit "P-3," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 946 to 955.
[38] Exhibit "P-2," Docket (CTA Crim. Case No. O-522), Vol. II, p. 940.
[39] Exhibit "P-6-5," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1059 to 1061.
[40] Exhibits "P-7-1" and "P-7-2," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1072 to 1073 and 1077 to 1078.
[41] Exhibits "A-34" and "A-35," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1413 to 1414.

accused corporation's income.

We are not convinced.

At the outset, this Court notes that the case[42] cited by the petitioners to support its argument, involves a different factual milieu than the one obtaining in the case at bar, and refers to the net worth method of investigation. In this case, however, the indirect method of investigation utilized by the revenue officers was the cash expenditure method of investigation, and is distinct from the net worth method employed in the cited case.

To understand the rationale behind the cash expenditure method, reference must be made to the provision of law, which authorizes the CIR to utilize indirect approaches in the investigation of tax liabilities, using the best evidence obtainable.

Pursuant to Section 6 (b) of the NIRC of 1997, as amended, the Commissioner is authorized to assess a taxpayer based on the best evidence obtainable in case there is reason to believe that there is fraud, to wit:

> "**SEC. 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –***
>
> xxx xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and Other Documents.* – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable."

The rule on the "best evidence obtainable" applies when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent.[43]

Corollary thereto, the Updated Handbook on Audit Procedures

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[42] *People of the Philippines vs. Court of Tax Appeals, First Division and Juan Miguel Arroyo,* G.R. No. 239159, September 12, 2018.
[43] *Bonifacia Sy Po vs. Court of Tax Appeals, et.al.,* G.R. No. 81446, August 18, 1988.

and Techniques Volume I, or Revenue Audit Memorandum Order No. 1-2000,[44] authorizes the indirect approach to investigation, such as, but not limited to the Cash Expenditure Method.

For easy reference, the pertinent provisions of RAMO No. 1-2000, is quoted hereunder, to wit:

> "XIII. Indirect Approach to Investigation
>
> Reconstruction of income is generally employed where the taxpayer keeps no record or inadequate records, or where there is strong suspicion that the taxpayer has received income from undisclosed sources.
>
> Over the years, the Bureau of Internal Revenue has developed the following general methods for reconstructing a taxpayer's income.
>
> xxx xxx xxx
>
> D. Cash expenditure method
>
> An outgrowth of the net worth method of determining income is the "excess cash expenditure method. This method assumes that the excess of a taxpayer's expenditures during a tax period over his reported income for that period is taxable to the extent not approved otherwise. The taxpayer may show that this excess resulted from non-taxable items such as loans, gifts, inheritance or assets on hand at the beginning of the period.
>
> While it has been said that no opening net worth is needed when the cash expenditure method is used, the more impressive authority is to the contrary. The two steps involved in the cash expenditure method are: a) valuation of the taxpayer's assets at the beginning of the taxable period in order to determine the taxpayer's funds available for expenditure during the ensuing taxable periods and b) determination of the amount by which expenditures exceed reported income for the taxable period. To show a failure to report the full amount of income by the use of this method, it must be demonstrated that the expenditures made during the taxable year were in excess of the available funds during

[44] March 17, 2000.

the year which were reported on the tax return.

Total expenditures may not include checks drawn to cash and items for which the taxpayer has paid in cash, unless the cash bank withdrawals were not used to pay for the cash expenditure. The burden is on the taxpayer to establish the relationship between the cash withdrawal and individual items. Expenditures may not necessarily come from income, but very large expenditures for personal purposes each year may be interpreted as an indication that the income being reported was too small.

Consideration must be given to non-taxable sources of cash. Here, too, the difficulty of establishing the amount of cash at the starting point has led to the use of Cohan rule to estimate the cash available at the opening of the taxable period. The method has to be rejected when it gives an unrealistic result.

Proof in cash expenditure case may be difficult, for it is highly unusual for anyone to keep accurate records of personal living expenses. <u>However, once the Revenue Officer has made a determination as to the amount of cash expenditures, the burden of proof to establish a different amount is on the taxpayer</u>." *(Underscoring supplied.)*

The usage of the Cash Expenditure Method is not novel, as it has been upheld by the Supreme Court as early as 1963, as a valid method of assessment. In fact, it goes so far as to declare that there is and there should be a presumption of regularity accorded this action of the CIR in assessing the tax on the best evidence obtainable, otherwise, it would be impossible to assess taxes due from a dishonest taxpayer, to wit:

"We next come to the question of the use of the inventory method in assessing the income taxes due from petitioner. The use of the inventory method is authorized under Section 15 of the National Internal Revenue Code (Com. Act No. 466), as amended, which authorizes the Collector of Internal Revenue to assess taxes due a taxpayer *from any other available fact or evidence*. If a taxpayer commits a violation of the law, hiding his income to evade payment of taxes, the Government must be permitted to resort to all evidence or sources available to determine his said income, so that the tax may be collected for public purposes. There is and there should be a presumption of regularity accorded this action of the Collector of Internal Revenue in assessing the tax on the best evidence obtainable, otherwise it would be impossible to assess taxes due from a dishonest taxpayer."[45]

It is by virtue of the foregoing provisions that the revenue officers were empowered to use the following formula for the expenditure method of proof, to wit:

"Expenditure (Money Spent or Applied)	
Less:	Non-Taxable Sources of Funds
Equals:	**Corrected Adjusted Gross Income**
Less:	Itemized/Standard deduction
	Personal Exemptions
Equals:	**Corrected taxable income**
Less:	Reported Taxable Income
Equals:	**Additional Taxable Income**
	(Unreported Income)"[46]

Utilizing this formula, the revenue officers were able to determine that petitioner corporation made substantial expenditures. And in the absence of a sufficient justification or explanation as to whether or not those funds were sourced from non-taxable sources, the presumption would be that it was derived from undisclosed taxable income.

A review of the evidence on record in this case, exposes the deliberate ploy of the petitioners to conceal all of the transactions that were uncovered by the revenue officers in the course of their investigation.

As correctly found by the Court in Division, petitioner corporation, as represented by petitioner Santos, acquired seven (7) King Long Model Buses in 2008,[47] and eighteen (18) Hyundai Buses in 2009.[48]

The seven (7) King Long Model Buses[49] were acquired through

[45] *William Li Yao vs. Collector of Internal Revenue,* G.R. No. L-11875, December 28, 1963.
[46] Exhibit "P-1-2," Docket (CTA Crim. Case No. O-522), Vol. III, p. 925.
[47] Exhibits "A-33" to "A-33-D," "A-34," and "A-35," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1407 to 1414.
[48] Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1217 to 1233.
[49] Exhibits "P-8-1" to "P-8-3," and "P-9-1" to "P-9-4," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1074 to 1076 and 1079 to 1082.

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two (2) Deeds of Sale,[50] with a cost of Php5,850,000.00 for the first three (3) buses, and Php7,800,000.00 for the additional four (4) buses.

The first three (3) King Long Model Buses are supposedly financed by a loan through a Promissory Note with Chattel Mortgage issued by the Philippine Business Bank.[51] However, a perusal of the said Promissory Note, shows that the total cost of the said buses is Php16,800,000.00, and not Php5,850,000.00, as stated in the Deed of Sale.

The other four (4) King Long Model Buses, on the other hand, are subject of a Contract to Sell[52] showing a total cost of Php16,000,000.00, or Php4,000,000.00 per unit.

In relation to the said purchases, evidence was presented by the defense (herein petitioners), showing check payments[53] made, as well as loans taken by the petitioners from AMA Rural Bank of Mandaluyong, Inc.[54] and RCBC Leasing & Finance Corporation[55] for the said buses.

On the other hand, the Deed of Absolute Sale[56] dated October 12, 2009, shows the acquisition of twelve (12) Hyundai Buses amounting to Php24,000,000.00, or a unit cost of Php2,000,000.00 each.

Evidence was also presented to show that fourteen (14) of the seventeen (17) buses purchases in 2009, were financed by loans taken from AMA Rural Bank of Mandaluyong, Inc., RCBC Leasing & Finance Corporation, and Insular Bank.[57]

Even a cursory review of the foregoing details already reveal a glaring disparity between the amounts declared in the Deeds of Sale

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[50] Exhibits "P-7-1" and "P-7-2," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1072 to 1073 and 1077 to 1078.
[51] Exhibits "A-33" to "A-33-D," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1407 to 1412.
[52] Exhibits "A-34" and "A-35," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1413 to 1414.
[53] Exhibits "A-35-A" to "A-35-B," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1415 to 1416.
[54] Exhibits "A-38" to "A-38-A," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1424 to 1425.
[55] Exhibits "A-39" to "A-39-A," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1426 to 1427.
[56] Exhibit "P-7-3," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1083.
[57] Exhibit "A-42," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1430 to 1431.

for the seven (7) King Long Model Buses in 2008, compared to the amounts stated in Promissory Note and Contract to Sell that were adduced as evidence by the accused (herein petitioners).

While the purchase price for buses purchased in 2008 were listed as Php5,850,000.00 and Php7,800,000.00 in the respective Deeds of Sale, the real purchase price appears to have been Php16,800,000.00 and Php16,000,000.00, respectively.

Clearly, there was already an intent to misstate the correct contract price in the subject Deeds of Sale.

An examination of petitioner corporation's Financial Statements, however, reveal a more incriminating scheme, as there is absolutely no indication in the subject Financial Statements that the said expenditures ever occurred. To be specific, *none* of the transactions relating to the subject buses were ever recorded. Both the fact of purchase and the corresponding outflow of cash or increase of liabilities (*i.e.,* Philippine Business Bank, AMA Rural Bank of Mandaluyong, Inc., RCBC Leasing & Finance Corporation, and Insular Bank) were never reflected in *any* of the Financial Statements.

In their defense, petitioners argue that they cannot be considered as owners of the buses at the time of its purchase in 2008 and 2009 since they did not derive any economic benefit therefrom, and the same were not traditionally delivered to them after purchase.

Assuming for the sake of argument that credence is given to the said defense, and the petitioners are not considered as owners of the buses at the time of purchase in 2008 and 2009, the petitioners still fail to offer any valid reason why the said purchases and loans were never indicated in any of the Financial Statements from 2008 to 2012. As aptly stated by the Court in Division, neither petitioners' Property, Plant, and Equipment (PPE) Accounts, nor its Liability Accounts reflected the subject transactions, from 2008 until 2012.[58] Surely, if petitioners' defense were to be believed, its Financial Statements as of 2012 should have already reflected the said expenditures and liabilities.

However, as can be gleaned from their Financial Statements, there is no showing that petitioners made any effort to ensure that the subject expenditures and the corresponding liabilities were properly

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[58] Exhibits " P-6-1" to "P-6-5," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 972, 992, 1016, 1035, and 1065.

reflected thereon. This is significantly incriminating, considering that petitioners had the responsibility "to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes," which in turn, are "based upon management's evaluation of relevant facts and circumstances as of the date of the financial statement."[59]

In fact, it should be noted that in the submission of the subject Financial Statements, petitioner Samuel S. Santos, on behalf of the corporation, categorically states that they are: 1) *responsible for all information and representation contained in the financial statements;* 2) the financial statements have been prepared in conformity with generally accepted accounting principles in the Philippines; 3) it *reflects amounts that are based on the best estimates and informed judgment of management with an appropriate consideration to materiality*; 4) the management maintains a system of accounting and reporting which provides for the necessary internal controls to ensure that transactions are properly authorized and recorded, assets are safeguarded against unauthorized use or disposition and liabilities are recognized; and 5) *the Board of Directors reviews the financial statements before such statements are approved* and submitted.[60] Thus, petitioners cannot feign ignorance that they had the duty to ensure that all transactions, including the subject expenditures and the corresponding debts and increase in capital, should have been properly reflected in its Financial Statements.

The inconsistency in the subject Deeds of Sale, as well as the continuous and deliberate non-recognition of the acquired assets, cash outflow, and incurred loans as liabilities are clear indications of a scheme attempting to evade or defeat the proper payment of tax.

As a result of this scheme, there was a 620% understatement of the total revenue for 2008, considering that petitioners only declared the amount of Php1,212,772.89 in the ITR for 2008, while a total down payment or cash outflow of Php7,520,000.00 was made.

As for 2009, there was a 650% understatement of the total revenue, with petitioners only declaring the amount of Php1,623,734.60 in the ITR for 2009, while there was an expenditure balance of Php10,560,000.00, which was unaccounted for by the loans incurred by the corporation.

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[59] Exhibits "P-6-1" to "P-6-5," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 981, 1000, 1025, 1053, and 1069.
[60] Exhibits " P-6-1" to "P-6-5," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 968, 991, 1012, 1032, and 1064.

Without any proof that the source of subject funds, *i.e.*, Php7,520,000.00 in 2008, and Php10,560,000.00 in 2009, were sourced from non-taxable revenue sources, the presumption of regularity in favor of the assessment based on the cash expenditure method, stands, and it is inferred that such expenditures are unreported income.

To counter this finding, petitioners presented several checks, as proof that the money used to fund the expenditures came from the savings of petitioner Santos' wife. Aside from these checks, however, petitioners failed to tender any other document, or evidence to prove that the money came from petitioner Santos' wife or that it represented a part of her investment. On the contrary, there is absolutely nothing in the records to show that the source of the funds used to purchase the subject buses came from legitimate sources. To make things worse, a perusal of the subject Financial Statements show no indication that the transactions even occurred, or that there was an increase in either the assets, liabilities, or capital of petitioner corporation. In short, the highly suspicious nature of the scheme employed by the petitioners lends more credence to the conclusion that the funds used to purchase the subject buses came from unreported income.

The attempt to evade or defeat tax or the payment thereof was willful.

To find petitioners liable for the crimes charged, it is likewise necessary to prove that the attempt to evade or defeat tax or the payment thereof was done *willfully,* with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

According to Black's Law Dictionary,[61] 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 x x x
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly,

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[61] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> 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."[62]

In this case, petitioner Santos admitted that he had knowledge that the transactions for the seven buses for 2008 and the 18 buses for 2009 were not properly reflected in the Financial Statements of the corporation.[63] He insists, however, that the hired accountants were far more knowledgeable about what should be included in the subject ITRs and Financial Statements.

To the mind of this Court, petitioner Santos' denial and alleged reliance on the expertise of his accountant to determine what should or should not be reflected in the corporation's ITR and corresponding Financial Statements, is a willful act, to delegate the performance of his legal duty to, tantamount to "deliberate ignorance" or "conscious avoidance" on his part, to ensure the accuracy of the information reflected in the said tax returns and Financial Statements.

Moreover, petitioner Santos fails to proffer any legitimate reasons for failing to declare the said transactions in their Financial Statements from 2008 to 2012.

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[62] [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.

[63] Exhibit "A-53," Docket (CTA Crim. Case No. O-522), pp. 1228 to 1229.

Petitioners are required under the NIRC or its rules and regulations to supply correct and accurate information, at the times required by law or rules and regulations.

Petitioner corporation is required under Section 52 (a) of the NIRC of 1997, as amended, to file an accurate quarterly income tax return *and* final or adjustment return, and petitioner Santos, in his capacity as the President thereof, is responsible therefor.

Petitioner corporation, as a domestic corporation, duly organized and incorporated[64] in the Philippines, is duty bound to supply correct and accurate information in the required tax returns, and filing them during the periods stated under the law.

As previously mentioned, petitioner Santos was proven to be the President of the corporation, having been listed under its General Information Sheet,[65] and having presented himself as such in the ITR for 2008,[66] as well as the Deeds of Sale[67] and Contract to Sell[68] pertaining to the purchase of seven (7) King Long Model Buses in 2008.

On the basis thereof, it is clear that the first element of the violation of Section 255 of the NIRC of 1997, as amended, has been proven.

Petitioners failed to supply correct and accurate information in the subject tax returns.

As previously mentioned, petitioners only declared the amount of Php1,212,772.89 in the ITR for 2008, while a total down payment or cash outflow of Php7,520,000.00 was made. Meanwhile, petitioners declared the amount of Php1,623,734.60 in the ITR for 2009, while there was an expenditure balance of Php10,560,000.00, which was unaccounted for by the loans incurred by the corporation.

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[64] Exhibit "P-3," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 946 to 955.
[65] Exhibit "P-2," Docket (CTA Crim. Case No. O-522), Vol. II, p. 940.
[66] Exhibit "P-6-5," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1059 to 1061.
[67] Exhibits "P-7-1" and "P-7-2," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1072 to 1073 and 1077 to 1078.
[68] Exhibits "A-34" and "A-35," Docket (CTA Crim. Case No. O-522), Vol. III, pp. 1413 to 1414.

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Considering that petitioners' expenditures exceeded its reported income, and the sources of the funds were inadequately explained and grossly unproven, it is reasonably concluded that such expenditures are unreported income. Thus, there was a failure on the part of the petitioners to supply correct and accurate information in the subject tax returns for taxable years 2008 and 2009.

The failure to supply correct and accurate information was willful.

Finally, this Court *En Banc* finds and so holds that the failure of the petitioners to declare the unreported income was willful, in view of the admission of petitioner Santos that he had knowledge that the transactions for the seven buses for 2008 and the 18 buses for 2009 were not properly reflected in the Financial Statements of the corporation.[69] Moreover, his unjustified ignorance, or conscious avoidance, of his responsibility to ensure the accuracy of the information provided in the subject tax returns and Financial Statements render his actions willful and intentional. Thus, the third element of the crime charged is likewise present in the case at bar.

Anent the civil liability of petitioners, reference must be made to Section 205 (b) of the NIRC of 1997, as amended, to wit:

> "**SEC. 205. *Remedies for the Collection of Delinquent Taxes.*** – The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> xxx xxx xxx
>
> (b) By civil or criminal action.
>
> xxx xxx xxx
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case <u>as finally decided by the Commissioner</u>."

Based on the foregoing provision, an errant taxpayer's civil liability, pursuant to a finding of guilt in a criminal action, will be based on the final determination of the Commissioner of the BIR.

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[69] Exhibit "P-53," Docket (CTA Crim. Case No. O-522), pp. 1228 to 1229.

In this case, this Court *En Banc* upholds the finding of the Court in Division that the prosecution failed to show any proof that there was a final determination by the CIR, with regard to the taxes subject of these consolidated cases. Without any showing that there was an assessment, or any other proof that there was a final determination of the taxes due in this case, this Court finds that there is no basis to impose any civil liability upon the petitioners in these consolidated cases.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated March 12, 2018 and Resolution dated May 30, 2018 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS, *Petitioners,*	**CTA EB CRIM. NO. 054** (CTA Crim. Case Nos. O-522, O-523, O-525 & O-554)
-versus-	Present: Del Rosario, *PJ,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: OCT 24 2019 4:16 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent in the *ponencia*'s findings that accused Samuel S. Santos and accused Kingsam Express Incorporation are criminally liable.

Mere increase in expense should not give rise to a presumption that an income was derived and that said income should be reported in the Income Tax Return (ITR)

I submit that a mere increase in taxpayer's expense, similar to an increase in net worth, should not result in a sweeping conclusion that the taxpayer derived income on the particular year the increase occurred and that the income so derived is of such nature that should be reflected in a corresponding Income Tax Return (ITR).

Expense is not income. These two concepts have separate and distinct meaning or definitions. To allow the mix-up of these concepts into one general definition for the purpose of establishing tax evasion is simply too ridiculous; in essence, it stretches "taxable income" as provided in Section 31 of the National Internal Revenue Code (NIRC) of 1997, as amended, beyond its definition.

For better understanding, an illustrative scenario may be proper:

> A taxpayer received in Year 1 substantial amount, for instance, from his grandfather. Whether the grandfather paid the correct taxes by virtue of the "gift" he extended is irrelevant.
>
> After several years, the taxpayer earned a degree and got himself employed, albeit with a salary a little higher than minimum wage.
>
> Finding good opportunity in business, in Year 25, he acquired equipment using the money he received in Year 1.
>
> In view of his huge expenses, he finds himself an accused in a criminal case for tax evasion. By all means, such prosecution is unjustified.

There is nothing "criminal" in a person's purchases of an equipment. Incurring expense is neither an income nor a criminal act.

The proposed difficulty of government in going after tax evaders if "expense" method is not allowed should not be accepted as a good and sufficient reason to burden citizens struggling for survival in a civilized society. Expediency is never an excuse to disregard an individual's right to be presumed innocent.

Truth to tell, what government seems to adopt - - with all its power and authority within its command - - is to require the taxpayer to prove his innocence. This is anathema to basic evidentiary principles in criminal proceedings.

In particular, by proving a taxpayer's expense, the government conveniently concludes that: an income was derived because an expense was incurred; the income was derived (which should have been declared) in the very same year; and the income so derived are of such nature that should be reported in an ITR. It must be noted that certain income or flow of wealth, such as royalties, gains on sale of capital assets, interest income from bank deposits and money market placements, investments in shares, donations or inheritance, are of such nature that they are not required to be included in the ITR.

The aforestated presumptions that form the basis of tax evasion are not sanctioned by the Rules of Evidence. And if they are the Bureau of Internal Revenue's (BIR) evidentiary guidelines in the prosecution of criminal cases, then they should be struck down outright. The promulgation of rules of procedure (including evidentiary rules) is constitutionally lodged with the Supreme Court[1] and the BIR may not encroach upon such authority. On this point, the pronouncement in ***Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) vs. Hon. Iluminada Cabato-Cortes***[2] is emphatic:

> "The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court [under] Section 5(5), Article VIII x x x .
>
> The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, **the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive**. x x x x (Italicization in the original; boldfacing supplied)

Increase in expense should not be taken as circumstantial evidence of income derived in the same year. At most, it may create an inference that the taxpayer who incurred the expense benefited from its proceeds; or that if equipment was purchased, that the taxpayer took possession of the item. But to say that the taxpayer received additional income whenever he incurs expense apparently greater that his salary or other declared current source of income is, at the very least, too illogical and, at its worse, too fearsome to innocent individuals.

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[1] Section 5(5), Article VIII, 1987 Constitution.
[2] G.R. No. 165922, February 26, 2010.

It is said that government can do no wrong; but government officials - - those who wield power - - are humans and not angels. They can do wrong, potentially and grievously.

The exercise of power that is fraught with abuse and arbitrariness should be checked at first instance.

Imagine a middle income employee who spends huge amount for the hospitalization and treatment of a seriously ill mother, using funds from relatives and friend's assistance, is immediately exposed to criminal prosecution in view of the "expense method" which government can use against him. There must be a better and more reasonable way by which prosecution for tax evasion should be allowed to prosper.

If a taxpayer has undeclared income, then government must itself prove the income derived and its potential source; the taxpayer being required to prove that he is criminally innocent does not make sense.

In criminal cases, the prosecution is burdened to identify the likely source of the unreported or undeclared income of the accused in order to sustain a conviction. On this point, the teachings in ***Bureau of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly,***[3] **anent the need to identify the likely source of income in criminal prosecution for tax evasion, in relation to the use of expenditure method** are instructive:

> "In Ungab v. Judge Cusi, Jr., we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. **However, in Commissioner of Internal Revenue v. Court of Appeals, we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.**
>
> In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the **expenditure method, which is a method of reconstructing a taxpayer's income by deducting the**

[3] G.R. No. 197590, November 24, 2014.

aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.

In the case at bar, **petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds.**

xxx xxx xxx

And since the underdeclaration is more than 30%of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as prima facie evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. **It agreed with Acting Justice Secretary Devanadera that petitioner failed to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and "to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties adverted to x x x." We find otherwise**.

The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit. The computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the under declaration exceeded 30% of the reported or declared income.

The revenue officers also <u>identified the likely source of the unreported or undeclared income</u> in their Reply-Affidavit. The pertinent portion reads:

'7. x x x x

[Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/ rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and came up with the **findings that indeed the**

> **unexplained funds sought to have been used in acquiring the valuable property in Tagaytay x x x <u>came from the underdeclaration of rental income</u>.'**
>
> **Apparently, the revenue officers considered respondent <u>Antonio's rental business to be the likely source of their unreported or undeclared income</u> due to his unjustified refusal to allow the revenue officers to inspect the building."** *(Boldfacing and underscoring supplied)*

In the present case, the **prosecution failed to prove the possible source/s of income** that would account for the sources of the expenses of the accused. There is no evidence offered by the prosecution which will show the likely source of income and the corresponding income derived therefrom by the accused during the concerned taxable years. Stated differently, the prosecution failed to point out the particular item of income which was not reported in the ITR of the accused.

If the prosecution has evidence of the income which the accused failed to report in the ITR, it should have identified with particularity said specific income item/s which were not allegedly declared therein. The prosecution should have pointed on which of the income items listed in Section 32 of the NIRC of 1997, as amended, that the accused failed to report in the ITR (albeit some of the items enumerated therein are not required to be reported in the ITR as they are undeniably subject to final tax). *Sans* the evidence of the income which was not reported by the accused in the ITR, applying the doctrine laid down in the *Manly case*, the BIR's use of the expenditure method was not justified.

The fact that certain buses purchased by the accused were not reflected in the financial statements of accused company does not again prove their purported undeclared income received in the year the expense was incurred. Accused may perhaps be liable for other offenses BUT not for tax evasion. It would have been different if the expenses were used by the accused as deductions to reduce their tax liability and yet, the expenses were not declared in the financial statements. What appears plain is that the non-inclusion of the transactions pertaining to the acquisition of the buses did not result in any benefit to the accused anent their computation of taxable income.

Accused Kingsam Express Incorporation may not be held criminally liable sans arraignment

In *Alfredo Ching vs. The Secretary of Justice, et.al*,[4] the Supreme Court elucidated on the prosecution of a corporation for a crime where the imposable penalty is fine, *viz.*:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, **a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined**." (Boldfacing supplied)

Section 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that any corporation, association or general co-partnership liable for any of the acts or omissions penalized under the NIRC, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty Thousand Pesos (₱50,000.00) but not more than One Hundred Thousand Pesos (₱100,000).

The *ponencia* affirmed the imposition of a fine upon accused Kingsam Express Incorporation, obviously as a criminal penalty under Section 256 of the NIRC of 1997, as amended. This, to my mind, is a travesty of the corporation's right to due process.

Perusal of the records disclosed that accused Kingsam Express Incorporation was never the subject of an arraignment (thru its responsible officers) wherein it was allowed to enter a plea after being informed of the nature and cause of accusation against it.

Arraignment is always indispensable in any criminal prosecution as the Constitution itself mandates that an accused has the right to be informed of the nature and cause of any accusation against him.[5] In fact, it is only after an accused has been informed of the

[4] G. R. No. 164317, February 6, 2006.
[5] Section 14(2), Article III, 1987 Constitution.

accusation through an arraignment that trial may proceed in *absentia.*[6]

I am not unaware that the masculine pronoun **"he"** was used in Section 1(a), Rule 116 of the Rules of Court when it requires the personal appearance of the accused during arraignment. To my mind, the use of the masculine pronoun "he" does not in any way suggest that arraignment of a corporation as an accused can be dispensed with.

The Rules of Court makes use of the masculine pronoun **"he"** in several other provisions, yet any such provision cannot be reasonably interpreted to preclude its application to a feminine litigant much more to a neuter litigant or a juridical entity.

As can be noted, the Certification of Non-Forum Shopping is a requirement in every initiatory pleadings. While a corporation could be a petitioner for instance in a Petition for Certiorari, it is NOT excused from the requirement of executing such certification, albeit the rule on the matter also makes use only of the pronoun **"he"**. Section 1, Rule 65 and Section 3, Rules 46 of the Rules of Court read:

Section 1, Rule 65

"Section 1. *Petition for certiorari.* — xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, **and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.**" (Boldfacing supplied)

Section 3, Rule 46

"Section 3. *Contents and filing of petition; effect of noncompliance with requirements.* — xxx

The petitioner shall also submit together with the petition a sworn certification that **he** has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, **he** must state the status of the same; and if **he** should thereafter learn that a similar action or proceeding has been filed or is pending before the

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[6] *Id.*

> Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, **he** undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom." (Boldfacing and underscoring supplied)

Truth to tell, where a masculine noun or pronoun is used in the Rules of Court, it necessarily implies and includes the corresponding feminine gender as well as a neuter since as aforesaid, a corporate entity can be a litigant itself.

To reiterate, *sans* an arraignment, accused Kingsam Express Incorporation cannot be convicted of the crimes charged in the Informations without violating its right to be informed of the nature and cause of the accusations against it, not to mention its right to due process.

All told, I VOTE to: (i) GRANT the Petition for Review filed by accused Samuel S. Santos and accused Kingsam Express Incorporation; (ii) REVERSE and SET ASIDE the assailed Decision and Resolution; and, (iii) ACQUIT accused Samuel S. Santos and accused Kingsam Express Incorporation of the charges against them.

ROMAN G. DEL ROSARIO
Presiding Justice