REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-251 & O-252** *Re: Violation of Section 255, 1997 NIRC*
-versus-	Present: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
ROMULO L. NERI, *Accused.*	Promulgated: AUG 30 2017 1:50pm

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DECISION

BAUTISTA, J:

The Case

Accused, Romulo L. Neri, was charged with two (2) counts of violation of *Section 255* in relation to *Sections 24 and 74 of the 1997 National Internal Revenue Code*[1], *as amended ("1997 NIRC")*, for willful, unlawful and felonious failure to supply correct and accurate information as to his total income in his Income Tax Return ("ITR") for taxable year ("TY")s 2008 and 2009.

The Facts

Accused is registered with the Bureau of Internal Revenue ("BIR"), Revenue District Office ("RDO") No. 39, South Quezon City, with Tax Identification Number ("TIN") 102-764-852.[2]

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[1] *Republic Act No. 8424,* January 1, 1998.
[2] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended Pre-Trial Order ("PTO"), par. 3,* p. 836.

For TYs 2008 to 2010, accused was the President and Chief Executive Officer ("CEO") of Social Security System ("SSS"), SSS nominee director of Union Bank of the Philippines ("UBP") and Philex Mining Corporation ("Philex") for which SSS has investments.[3] As such public official, accused received taxable income or compensation from SSS, UBP, Philex, Commission on Higher Education ("CHED"), and Philippine Health Insurance Corporation ("Philhealth").[4]

For TY 2009, accused received income as director of Philhealth in the amount of Php290,625.00[5], and Php1,400,000.00 as *per diems* for attendance during board meetings; and Php15,431,036.51 as profit share in UBP.[6]

Accused filed his amended ITRs for TYs 2008[7] and 2009[8] where he declared the amounts of Php1,352,614.00 and Php15,424,164.73, respectively, as his gross income.[9] He also filed his 2010 ITR[10] and declared a gross income of Php20,913,786.67.[11]

On September 25, 2010, accused received Letter of Authority[12] ("LOA")-211-2010-00000231 SN: eLA201000015025 dated September 24, 2010.[13]

On May 6, 2011, Asst. State Prosecutor ("ASP") Amor L. Robles ("ASP Robles"), Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and Prosecutor General Claro A. Arellano ("PG Arellano"), all of the Department of Justice ("DOJ"), issued a Resolution[14] recommending the filing of Informations for two (2) counts of violation of *Section 255 of the 1997 NIRC* against accused, upon finding that accused, a

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[3] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended PTO, par. 7,* p. 837.
[4] *Id., par. 8,* p. 837.
[5] *Id., par. 4,* p. 837.
[6] *Id., par. 10,* p. 837.
[7] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "N" and sub-markings, 2008 Amended Income Tax Return ("ITR"),* pp. 1273-1277, with annexes; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "1" and sub-markings, 2008 Amended ITR,* pp. 1657-1663, with annexes.
[8] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q" and sub-markings, 2009 Amended ITR,* pp. 1296-1301, with annexes; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2" and sub-markings, 2009 Amended ITR,* pp. 1664-1670, with annexes.
[9] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended PTO, par. 5,* p. 837.
[10] *Id., Vol. 4, Exhibit "3" and sub-markings, 2010 ITR,* pp. 1671-1691, with annexes.
[11] *Id., Vol. 2, Amended PTO, par. 9,* p. 837.
[12] *Id., Vol. 3, Exhibit "A," Letter of Authority ("LOA"),* p. 1249.
[13] *Id., Vol. 2, Amended PTO, par. 6,* p. 837.
[14] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "QQ," Department of Justice ("DOJ") Resolution Dated May 6, 2011,* pp. 1374-1395; *Accused's Formal Offer of Evidence ("FOE"), Folder 1, Exhibit "6," DOJ Resolution Dated May 6, 2011.*

registered taxpayer required to pay any tax or supply correct and accurate information pertaining to all income and compensation received by him for TYs 2008 and 2009, under declared all his income in his ITRs, as a result of which, accused failed to pay his correct and accurate taxes for TYs 2008 and 2009, as follows:

For TY 2008:

	INCOME BASED ON CERTIFICATIONS/ FINANCIAL DOCUMENTS		DECLARED IN ITR		VARIANCE		% OF VARIANCE
SSS	Php	950,291.00	Php	512,291.00	Php	438,000.00	
UBP		8,333,827.97		408,600.00		7,925,227.97	
Philex		24,000.00		16,000.00		8,000.00	
Other Income							
1. CHED		315,723.00		315,723.00		-	
2. Philhealth		100,000.00		100,000.00		-	
TOTAL GROSS INCOME	**PHP**	**9,723,841.97**	**PHP**	**1,352,614.00**	**PHP**	**8,371,227.97**	**86%**

For TY 2009:

	INCOME BASED ON CERTIFICATIONS/ FINANCIAL DOCUMENTS		DECLARED IN ITR		VARIANCE		% OF VARIANCE
SSS	Php	2,427,419.37	Php	1,306,219.37	Php	1,121,200.00	
UBP		20,792,750.50		3,134,123.56		17,658,626.94	
Philex		8,557,458.00		10,693,196.80		(2,135,738.80)	
Other Income							
1. CHED		-		-		-	
2. Philhealth		290,625.00		290,625.00		-	
TOTAL GROSS INCOME	**PHP**	**32,068,252.87**	**PHP**	**14,117,945.36**	**PHP**	**16,644,088.14**	**52%**

On November 16, 2011, a Resolution[15] was promulgated by the DOJ, recommending the denial of the BIR's and accused's Motions for Reconsideration.

On November 24, 2011, plaintiff, through ASP Robles and PG Arellano, filed two (2) separate Informations before the Court of Tax Appeals ("CTA"), docketed as *CTA Crim. Case Nos. O-251* and *O-252*, the first was raffled to the Third Division, and the second to the Second Division, charging accused as follows:

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[15] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "RR," DOJ Resolution Dated November 16, 2011,* pp. 1396-1409.

CTA Crim. Case No. O-251[16]:

The undersigned [ASP] of the [DOJ], hereby accuses **ROMULO L. NERI**, of the offense of violation of Section 255 in relation to Sections 24 and 74 of the [1997 NIRC], committed as follows:

> "That on or about the 15th day of April 2010, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer at [RDO] No. 39, South Quezon City with BIR [TIN] 102-764-852, and with present address at 28 Palali St., Sta. Mesa Heights Quezon City, earning income for [TY] **2008**, being then the President and [CEO] of [SSS], nominee Member of the Board of Director[s] of [UBP] and [Philex] for which SSS has investment, having received from these companies income or compensation in the amount of P[hp]2,427,419.37 from SSS, the amount of P[hp]20,792,750.50 from UBP and the amount of P[hp]8,557,458.00 from [Philex] and P[hp]290,625.00 from Philheath as other income, or in the total amount of income of **P[hp]32,068,252.87**, which he has obligation to declare in his 2009 [ITR], did then and there, willfully, unlawfully and feloniously fail to supply such correct and accurate information as to his total income in his ITR with the [BIR] for [TY] of 2009 when he under declared only the amount of P[hp]1,306,219.37 from SSS, the amount of P[hp]3,134,123.56 from UBP and the amount of P[hp]10,693,196.80 from [Philex], P[hp]290,625.00 from Philhealth as other income, or **in the total amount of P[hp]14,117,945.36, thereby resulting to a variance or discrepancy in the amount of P[hp]16,644,088.14, which is 52% as under declared income**, to the damage and prejudice of the Government in the **estimated tax due amount of P[hp]8,379,893.33** inclusive of penalties, surcharges and interest."
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> CONTRARY TO LAW.

CTA Crim. Case No. O-252[17]:

The undersigned [ASP] of the [DOJ], hereby accuses **ROMULO L. NERI**, of the offense of violation of Section 255

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[16] *Records, CTA Crim. Case No. O-251, Vol. 1, Information,* pp. 4-118; Emphases retained; "2008" underscored and in bold since the Information will be amended later on to change this to "2009."
[17] *Records, CTA Crim. Case No. O-252, Information,* pp. 5-118, with annexes; Emphases retained.

in relation to Sections 24 and 74 of the [1997 NIRC], committed as follows:

> "That on or about the 15th day of April 2009, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer at [RDO] No. 39, South Quezon City with BIR [TIN] 102-764-852, and with present address at 28 Palali St., Sta. Mesa Heights Quezon City, earning income for [TY] 2008, being then the President and [CEO] of [SSS], nominee Member of the Board of Director[s] of [UBP] and [Philex] for which SSS has investment, having received from these companies income or compensation in the amount of P[hp]950,291.00 from SSS, the amount of P[hp]8,333,827.97 from UBP, the amount of P[hp]24,000.00 from [Philex], the amount of P[hp]315,723.00 from CHED and P[hp]100,000.00 from Philhealth as other income, or in the total amount of income of **P[hp]9,723,841.97**, which he has obligation to declare in his 2008 [ITR], did then and there, willfully, unlawfully and feloniously fail to supply such correct and accurate information as to his total income in his ITR with the [BIR] for [TY] of 2008 when he under declared only the amount of P[hp]512,291.00 from SSS, the amount of P[hp]408,600.00 from UBP and the amount of P[hp]16,000.00 from [Philex], P[hp]415,723.00 as other income, **or in the total amount of P[hp]1,352,614.00**, thereby **resulting to a variance or discrepancy in the amount of P[hp]8,371,227.97, which is 86% as under declared income**, to the damage and prejudice of the Government in the **estimated tax amount due of P[hp]5,240,979.22** inclusive of penalties, surcharges and interest."
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> CONTRARY TO LAW.

On December 1, 2011, the Second Division issued a Resolution[18] noting the voluntary surrender of accused and his submission to the jurisdiction of the Court. Said Resolution also approved his provisional liberty after posting a cash bail bond in the amount of Php20,000.00, with Official Receipt ("OR") No. 4113757. Thereafter, accused's arraignment in *CTA Crim. Case No. O-252* was set on December 14, 2011.

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[18] *Records, CTA Crim. Case No. O-252, Resolution,* p. 120.

On even date and in both cases, accused executed an Undertaking[19] that he will appear before the Court whenever required; that failure to appear at the trial without justification despite due notice shall be an express waiver of his right to be present on the date specified in the notice; that he shall surrender himself for execution of the final judgment; that he shall not leave the country without prior permission of the Court; and that he shall notify the Court of any change in his residence.

On December 2, 2011, the Third Division issued a Resolution[20] stating that accused voluntarily surrendered and submitted himself to the jurisdiction of the Court. Said Resolution also approved accused's provisional liberty after posting a cash bail bond in the amount of Php20,000.00, with OR No. 4113758. Thereafter, accused's arraignment in *CTA Crim. Case No. O-251* was set on December 14, 2011.

Counsel for accused, Atty. Paul P. Lentejas ("Atty. Lentejas"), filed his Entry of Appearance in *CTA Crim. Case No. O-251*[21] and in *CTA Crim. Case No. O-252*[22] on December 2, 2011, which were noted by the Third Division[23], and by the Second Division[24], respectively.

On December 12, 2011, accused filed before the Second Division a Motion for Consolidation[25], praying for *CTA Crim. Case No. O-252* to be joined or be consolidated with *CTA Crim. Case No. O-251*, the latter bearing the lower docket number, and is pending before the Third Division. The same was granted by the Second Division in a Resolution[26] dated December 14, 2011, and it was ordered that the records of *CTA Crim. Case No. O-252* be forwarded to the Third Division for consolidation with *CTA Crim. Case No. O-251*. Accused's arraignment on said date was cancelled.

Plaintiff, through Attys. Grace Kelly L. Baccay-Parungao and Voltaire Uy, filed their Entry of Appearance in *CTA Crim. Case No.*

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[19] *Records, CTA Crim. Case No. O-251, Vol. 1, Undertaking,* pp. 121-124, with annexes; *Records, CTA Crim. Case No. O-252, Undertaking,* pp. 122-126, with annexes.
[20] *Records, CTA Crim. Case No. O-251, Vol. 1, Resolution,* p. 126.
[21] *Id., Entry of Appearance,* pp. 127-128.
[22] *Id., CTA Crim. Case No. O-252, Entry of Appearance,* pp. 127-128.
[23] *Id., CTA Crim. Case No. O-251, Vol. 1, Minute Resolution,* p. 279.
[24] *Id., CTA Crim. Case No. O-252, Resolution,* p. 129.
[25] *Id., Motion for Consolidation,* pp. 281-284.
[26] *Records, CTA Crim. Case No. O-252, Resolution,* pp. 287-288.

251[27], which was noted by the Third Division in a Minute Resolution[28] dated December 14, 2011. Their Entry of Appearance in *CTA Crim. Case No. O-252*[29] was likewise filed on the same day.

During the December 14, 2011 hearing in *CTA Crim. Case No. O-251,* the arraignment of accused was rescheduled; and, by manifestation of the parties that the Second Division has already granted[30] the Motion for Consolidation of *CTA Crim. Case No. O-252* with *CTA Crim. Case No. O-251,* the Third Division (hereinafter referred to as "the Court") accepted the consolidation of both cases.[31]

ASP Olivia L. Torrevillas entered her special appearance for the prosecution during the March 7, 2012 hearing, and submitted ASP Robles' Manifestation and Compliance[32] in open court.[33]

Thereafter, upon being arraigned and with the assistance of counsel, accused entered a plea of "Not Guilty" to the two (2) cases filed against him.[34] Accused also admitted that he is the same person charged in the Information in each of the consolidated cases.[35] The preliminary conference was then set on April 12, 2012, and the pre-trial conference on April 25, 2012.[36]

On March 7, 2012, Attys. Claro B. Ortiz, Rosario M. Padilla, Hayle F. Bonilla, Emmanuel S. Ferrer, Jr., and Voltaire S. Uy, filed a Manifestation[37] showing their authority to appear as Special Prosecutors before the Court, with or without the appearance of the assigned DOJ prosecutor. They filed their Entry of Appearance[38] on the same date, which was noted by the Court in a Minute Resolution[39] dated March 29, 2012.

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[27] *Records, CTA Crim. Case No. O-251, Vol. 1, Entry of Appearance,* pp. 280-281.
[28] *Id., Minute Resolution,* p. 282.
[29] *Id., CTA Crim. Case No. O-252, Entry of Appearance,* pp. 285-286.
[30] *Id., Minutes of Hearing Dated December 14, 2011,* p. 289.
[31] *Id., CTA Crim. Case No. O-251, Vol. 1, Minutes of Hearing Dated December 14, 2011,* p. 283.
[32] *Id., Manifestation and Compliance,* pp. 414-430.
[33] *Records, CTA Crim. Case No. O-251, Vol. 1, Minutes of Hearing Dated March 7, 2012,* p. 392.
[34] *Id.* at 392.
[35] *Records, CTA Crim. Case No. O-251, Vol. 1, Minutes of Hearing Dated March 7, 2012,* p. 392; *Records, CTA Crim. Case No. O-251, Vol. 1, Identity Admission of the Accused,* p. 393; *Records, CTA Crim. Case No. O-251, Vol. 1, Certificate of Arraignment,* p. 394.
[36] *Records, CTA Crim. Case No. O-251, Vol. 1, Minutes of Hearing dated March 7, 2012,* p. 392.
[37] *Id., Manifestation,* pp. 431-436, with annexes.
[38] *Id., Entry of Appearance,* pp. 437-439.
[39] *Id., Minute Resolution,* p. 475.

On April 16, 2012, Atty. David A. Domingo ("Atty. Domingo") filed his Entry of Appearance[40] as collaborating counsel for accused, which was noted by the Court in a Minute Resolution[41] dated April 16, 2012.

Preliminary Conference[42] was held on April 12, 2012, wherein counsels for both parties manifested that they will confer with each other regarding the exhibits, facts, and issues involved in the consolidated cases, and will submit a Manifestation regarding the outcome of said conference.[43] Thus, the preliminary conference was suspended.[44]

Pursuant to the Resolution[45] issued by the Court ordering the parties to file their respective Pre-Trial Briefs at least three (3) days before April 25, 2012, the Pre-Trial Brief for the Accused[46] was filed on April 20, 2012.

However, on April 23, 2012, plaintiff and accused filed an Urgent Joint Motion to Reset/Reschedule Pre-Trial Hearing and Submission of Pre-Trial Brief[47] ("Urgent Joint Motion to Reset"), which was granted by the Court during the April 25, 2012 hearing[48]. Accordingly, the pre-trial was cancelled and rescheduled to June 6, 2012, and another preliminary conference was set on May 15, 2012.[49] Both parties were ordered to submit their respective Pre-Trial Briefs at least three (3) days before June 6, 2012.[50]

On May 11, 2012, plaintiff, through counsels, filed an Urgent Motion to Admit Amended Information (With Leave of Court)[51] ("Urgent Motion to Admit Amended Information") praying that the attached Amended Information[52] against accused be admitted, to which accused opposed in a Motion to Admit Attached Opposition[53]

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[40] *Records, CTA Crim. Case No. O-251, Vol. 1, Entry of Appearance,* pp. 486-487.
[41] *Id., Minute Resolution,* p. 499.
[42] *Id., Minutes of Preliminary Conference Dated April 12, 2012,* p. 493.
[43] *Id.*
[44] *Id.*
[45] *Id., Resolution,* pp. 472-473.
[46] *Records, CTA Crim. Case No. O-251, Vol. 1, Pre-Trial Brief for the Accused,* pp. 509-513.
[47] *Id., Urgent Joint Motion to Reset,* pp. 514-516.
[48] *Id., Minutes of Hearing Dated April 25, 2012,* p. 517.
[49] *Id.*
[50] *Id.*
[51] *Id., Vol. 2, Urgent Motion to Admit Amended Information,* pp. 530-540.
[52] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended Information,* pp. 538-540.
[53] *Id., Motion to Admit Attached Opposition,* pp. 599-601.

with attached Opposition to Motion to Amend Information dated May 3, 2012[54] ("Opposition") filed on June 4, 2012. The prosecution filed its Reply (To Respondent's Opposition to the *Ex-Parte* Motion to Amend Information)[55] on June 11, 2012.

During the June 6, 2012 hearing, the Court granted accused's Motion to Admit Attached Opposition and admitted the Opposition.[56] Eventually, in a Resolution[57] dated June 29, 2012, the Court granted plaintiff's Urgent Motion to Admit Amended Information and accordingly admitted the attached Amended Information[58] for *CTA Crim. Case No. O-251*, charging accused as follows:

> The undersigned [ASP] of the [DOJ], hereby accuses **ROMULO L. NERI**, of the offense of violation of Section 255 in relation to [S]ections 24 and 74 of the [1997 NIRC], committed as follows:
>
>> "That on or about the 15th day of April 2010, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer at [RDO] No. 39, South Quezon City with BIR [TIN] 102-764-852, and with present address at 28 Palali St., Sta. Mesa Heights Quezon City, earning income for [TY] **2009**, being then the President and [CEO] of [SSS], nominee Member of the Board of Director[s] of [UBP] and [Philex] for which SSS has investment, having received from these companies income or compensation in the amount of P[hp]2,427,419.37 from SSS, the amount of P[hp]20,792,750.50 from UBP and the amount of P[hp]8,557,458.00 from [Philex] and P[hp]290,625.00 from Philheath as other income, or in the total amount of income of **P[hp]32,068,252.87**, which he has obligation to declare in his 2009 [ITR], did then and there, willfully, unlawfully and feloniously fail to supply such correct and accurate information as to his total income in his ITR with the [BIR] for [TY] of 2009 when he under declared only the amount of P[hp]1,306,219.37 from SSS, the amount of P[hp]3,134,123.56 from UBP and the amount of P[hp]10,693,196.80 from [Philex], P[hp]290,625.00

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[54] *Records, CTA Crim. Case No. O-251, Vol. 2, Opposition,* pp. 602-606.
[55] *Id., Reply to Accused's Opposition,* pp. 609-613.
[56] *Records, CTA Crim. Case No. O-251, Vol. 2, Minutes of Hearing Dated June 6, 2012,* p. 608; *Records, CTA Crim. Case No. O-251, Vol. 2, Resolution,* pp. 615-616.
[57] *Records, CTA Crim. Case No. O-251, Vol. 2, Resolution,* pp. 618-623.
[58] *Id., Amended Information,* pp. 538-540.

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> from Philhealth as other income, or **in the total amount of P[hp]14,117,945.36, thereby resulting to a variance or discrepancy in the amount of P[hp]16,644,088.14, which is 52% as under declared income**, to the damage and prejudice of the Government in the **estimated tax due amount of P[hp]8,379,893.33** inclusive of penalties, surcharges and interest."
>
> CONTRARY TO LAW.

On June 1, 2012, the Pre-Trial Brief for the Prosecution[59] was filed. Thereafter, an Amended Pre-Trial Brief for the Prosecution[60] ("Prosecution's Amended Pre-Trial Brief") was filed on January 24, 2013.

On January 21, 2013, the Amended Pre-Trial Brief for the Accused[61] ("Accused's Amended Pre-Trial Brief") was filed.

Preliminary Conference[62] was held on February 19, 2013, where both parties marked their respective documentary evidence. On even date, the prosecution filed its Amended Pre-Trial Brief for the Prosecution[63] ("Prosecution's 2nd Amended Pre-Trial Brief").

In an Order[64] issued on April 2, 2013, the consolidated cases were transferred to the Second Division pursuant to *CTA Administrative Circular No. 01-2013* reorganizing the three (3) divisions of the CTA, but were eventually returned to the Court pursuant to *Section 5, Rule V, of the Internal Rules of the CTA* in an Order[65] issued on June 5, 2013.

Meanwhile, during the May 9, 2013 hearing,[66] the Second Division set the initial presentation of evidence for the prosecution on June 5, 2013. The Pre-Trial Order[67] ("PTO") was issued on the same date.

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[59] *Records, CTA Crim. Case No. O-251, Vol. 2, Pre-Trial Brief for the Prosecution*, pp. 577-597.
[60] *Id., Amended Pre-Trial Brief for the Prosecution*, pp. 715-735.
[61] *Id., Amended Pre-Trial Brief for the Accused*, pp. 710-714.
[62] *Id., Minutes of Preliminary Conference Dated February 19, 2013*, pp. 752-a-753.
[63] *Id., Vol. 2, 2nd Amended Pre-trial Brief for the Prosecution*, pp. 756-776.
[64] *Id., Order*, p. 790.
[65] *Records, CTA Crim. Case No. O-251, Vol, 2, Order*, p. 817.
[66] *Id., Minutes of Hearing Dated May 9, 2013*, p. 815.
[67] *Id., PTO*, pp. 798-814.

In a Resolution[68] dated July 8, 2013, the Court granted accused's Motion to Amend Pre-Trial Order dated May 9, 2013[69], and thereafter issued an Amended Pre-Trial Order[70] on August 23, 2013. The initial presentation of evidence for the prosecution was set on September 4, 2013.[71]

Trial ensued. During the September 4, 2013 hearing[72], accused, with the assistance of his counsel, was arraigned under the Amended Information in *CTA Crim. Case No. O-251* and personally entered a plea of "Not Guilty" to the charge under the Amended Information.

To prove its case, the prosecution presented the following employees of the BIR as witnesses: *(1)* Revenue Officer ("RO") Ma. Lourdes Sante[73] ("RO Sante"), assigned at the National Investigation Division ("NID") of the BIR; *(2)* RO Gerry E. Saga[74] ("RO Saga"), currently at RDO No. 38, but previously assigned at the NID; *(3)* Atty. Aurora V. Flor[75] ("Ms. Flor"), Attorney IV at the NID; and *(4)* RO Angela Marie T. Simpit[76] ("RO Simpit"), assigned at the NID. Prosecution also presented the following witnesses: *(5)* Ms. Michaela Sophia E. Rubio[77] ("Ms. Rubio"), First Vice President ("VP") and Human Resource ("HR") Director of UBP; *(6)* Mr. Danny Y. Yu[78] ("Mr. Yu"), Chief Finance Officer ("CFO") and Treasurer of Philex; and *(7)* Atty. Belinda B. Ella[79] ("Ms. Ella"), Officer-in-Charge of Luzon Regional Processing Department of SSS, but previously the department manager of the General Accounting Department ("GAD") of SSS.

Prosecution's first witness, **RO Sante**, testified[80] that the BIR conducted an investigation against accused after the Senate Committee on Finance ("SCF") conducted an inquiry on the excessive salaries and bonuses given by government owned and controlled corporations ("GOCC") and government financial institutions

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[68] *Records, CTA Crim. Case No. O-251, Vol. 2, Resolution,* pp. 830-834.
[69] *Id., Motion to Amend PTO Dated May 9, 2013,* pp. 820-824.
[70] *Id., Amended PTO,* pp. 836-854.
[71] *Id.* at 853.
[72] *Records, CTA Crim. Case No. O-251, Vol. 2, Minutes of Hearing Dated September 4, 2013,* p. 855; *Records, CTA Crim. Case No. O-251, Vol. 2, Certificate of Arraignment,* p. 856.
[73] *Records, CTA Crim. Case No. O-251, Vol. 2, Minutes of Hearing Dated September 4, 2013,* p. 855.
[74] *Id., Minutes of Hearing Dated October 2, 2013,* p. 935.
[75] *Id., Minutes of Hearing Dated October 16, 2013,* p. 939.
[76] *Id., Minutes of Hearing Dated November 13, 2013,* p. 984.
[77] *Id., Vol. 3, Minutes of Hearing Dated February 5, 2014,* p. 1089.
[78] *Records, CTA Crim. Case No. O-251, Vol. 3, Minutes of Hearing Dated May 21, 2014,* p. 1182.
[79] *Id., Vol. 3, Minutes of Hearing Dated June 25, 2014,* p. 1226.
[80] *Id., Vol. 2, Transcript of Stenographic Notes ("TSN"), September 4, 2013,* pp. 863-864.

("GFI") to its officers; and that her group in the NID, consisting of herself, RO Simpit and Ms. Flor, were tasked to conduct a preliminary investigation against accused. She explained that they did a profiling of accused, wherein they accessed the BIR's Integrated Tax System ("ITS") to check accused's name, TIN, and address; and that accused was assigned TIN 102-764-852, is a resident of No. 28 Palali St., Sta. Mesa Heights, Quezon City, and is registered under RDO No. 39 South Quezon City. Thereafter, they sent access letters[81] to companies where accused is supposed to be receiving excessive salaries and remunerations, such as SSS, Philex, and UBP, to check the veracity of the information provided by the SCF. In response, SSS, Philex, and UBP issued certifications[82] detailing the amounts received by accused from them. They likewise sent an access letter to RDO No. 39, which transmitted a print out of accused's ITR for TYs 2002 to 2005 and TYs 2007 to 2008, as indicated in the cover letter[83] signed by Mr. Mahinardo G. Mailig ("RDO Mailig"). Thereafter, based on the documents and information gathered, they requested for the issuance of an LOA for the investigation of accused's tax liabilities, to which LOA-211-2010-00000231[84] dated September 24, 2010 was issued authorizing herself, RO Simpit, and Ms. Flor, to conduct an investigation of accused's tax liabilities for TYs 2004 to 2009; that the LOA was served to accused together with a list of documents[85] required to be submitted; that accused did not submit any document in response to said request; that for accused's failure, another letter request[86] was sent; and that as far as she knows, accused did not submit any document, hence, a final notice[87] was issued.

RO Sante further testified[88] that after the first request for presentation of documents, they also recommended, through the Run After Tax Evaders (RATE) Program of the Legal and Writing Group of the BIR, the filing of a RATE case against accused; that the Commissioner of Internal Revenue ("CIR") issued a recommendation for the filing of RATE case against accused; that thereafter, a Joint

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[81] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "F," Access Letter to SSS,* p. 1255.
[82] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibits "G," Certification from SSS Dated September 21, 2010,* p. 1256; *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "H" and sub-markings, Certification from Philex Dated October 4, 2010,* pp. 1257-1258; *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "I" and sub-markings, Certification from UBP Dated October 14, 2010,* pp. 1259-1260; *Accused's FOE, Folder 1, Exhibit "9," Certification from UBP Dated October 14, 2010.*
[83] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "J," Cover Letter from RDO No. 39 Dated September 1, 2010,* p. 1261.
[84] *Id., Exhibit "A," LOA,* p. 1249.
[85] *Id., Exhibit "C" and sub-markings, List of Documents,* pp. 1250-1252.
[86] *Id., Exhibit "D," Second Request for Presentation of Records Dated March 21, 2011,* p. 1253.
[87] *Id., Exhibit "E," Final Notice Dated April 11, 2011,* p. 1254.
[88] *Id., Vol. 2, TSN, September 4, 2013,* pp. 881-885.

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Complaint Affidavit[89], signed by herself, RO Simpit, Ms. Flor, and RO Saga, was filed; and subsequently, they proceeded with the filing of the case with the DOJ, after being authorized[90] by former CIR Kim S. Jacinto-Henares.

On cross examination,[91] RO Sante clarified that Ms. Flor did not sign the Joint Complaint Affidavit because she was promoted as Assistant Chief of the NID before filing of the case with the DOJ, and RO Saga replaced her as group supervisor ("GS"); that they adopted the findings of the SCF in their investigation; that they did not find any difference in accused's income from the SCF findings and the certifications issued by SSS, Philex, and UBP; and that they relied on these certifications without requesting supporting documents. Regarding the certification issued by SSS, she testified that they did not include Php11,677,232.25[92] in the computation of accused's income from SSS because said amount was described as director's fees remitted by UBP to accused, and they only considered the salaries and representations paid by SSS to accused as his income from SSS.

During the continuation of RO Sante's cross-examination on September 18, 2013,[93] she testified that her group did not discuss with Ms. Ella, who issued the certification, regarding the contents thereof; that they interpreted that the amounts Php7,715,518.26 and Php3,961,713.99, or the total amount of Php11,677,232.25 appearing from said certification, are part of accused's income; and that the Php3,961,713.99 was treated as part of accused's income from UBP, and not from SSS.

On re-direct,[94] RO Sante reiterated that they did not investigate further on the income payments made by SSS, Philex, and UBP to accused as appearing on the certifications since the LOA covers only accused, and does not include the three (3) companies.

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[89] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "JJ" and sub-markings, Joint Complaint Affidavit,* pp. 1359-1363.
[90] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "II" and sub-markings, Referral Letter Signed by Former CIR Kim S. Jacinto-Henares,* pp. 1357-1358.
[91] *Id., Vol. 2, TSN, September 4, 2013,* pp. 886-895.
[92] *See Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "G," Certification from SSS Dated September 21, 2010,* p. 1256.
[93] *Records, CTA Crim. Case No. O-251, Vol. 2, TSN, September 18, 2013,* pp. 912-926.
[94] *Id.* at 926-927.

During the October 2, 2013 hearing,[95] **RO Saga** was presented as the prosecution's second witness. He testified[96] that prior to his current assignment at RDO No. 38 North Quezon City, he was assigned at the NID, and he was part of the group that conducted the investigation of accused's tax liabilities; that he was present when his team personally served the Second Request for Presentation of Records[97] ("Second Notice"), the Final Notice[98], and the Formal Letter of Demand[99] ("FLD") to accused at his residence; that since accused was not present to personally receive said documents, the same were received by someone who opened the gate, and whose signatures[100] he identified.

On cross-examination,[101] RO Saga clarified that his participation in the investigation is to serve the documents to accused; and that as the acting GS, he signed the Second Notice.

When asked for clarification by the Court,[102] he said that the purpose of the Second Notice is to require accused to present some documents, which accused failed to provide; and that he thinks that the person who received the Second Notice was a lady who is part of accused's household.

The prosecution's third witness, **Ms. Flor**, testified[103] that the LOA[104] issued to their group was personally served at accused's address and received by a certain Regina Mendez ("Ms. Mendez") who represented herself to them as accused's representative; that she knows that the signature[105] appearing in the LOA is that of Ms. Mendez because the latter signed in her presence; that after service of

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[95] *Records, CTA Crim. Case No. O-251, Vol. 2, Minutes of Hearing Dated October 2, 2013,* p. 935.
[96] *TSN, Vol. 2, October 2, 2013,* pp. 5-12.
[97] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "D," Second Request for Presentation of Records Dated March 21, 2011,* p. 1253.
[98] *Id., Vol. 3, Exhibit "E," Final Notice Dated April 11, 2011,* p. 1254.
[99] *Id., Exhibit "EE" and sub-markings, Formal Letter of Demand ("FLD"),* pp. 1339-1340.
[100] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "D-1," Signature of Accused's Representative,* p. 1253; *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "D-2", Date of Receipt,* p. 1253; *Records, CTA Crim. Case No. O-251, Exhibit "E-1," Signature of Accused's Representative,* p. 1254; *Records, CTA Crim. Case No. O-251, Exhibit "E-2," Date of Receipt,* p. 1254; *Records, CTA Crim. Case No. O-251, Exhibit "EE-2," Signature of Accused's Representative,* p. 1339; *Records, CTA Crim. Case No. O-251, Exhibit "EE-3," Date of Receipt,* p. 1339;
[101] *TSN, Vol. 2, October 2, 2013,* pp. 12-16.
[102] *Id.* at 16-18.
[103] *Records, CTA Crim. Case No. O-251, Vol. 2, TSN, October 16, 2013,* pp. 943-951.
[104] *Id., Vol. 3, Exhibit "A," LOA,* p. 1249.
[105] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "B," Signature of Regina Mendez,* p. 1249; *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "B-1," Date of Receipt,* p. 1249.

the LOA, she ceased to be the GS after her appointment as the Assistant Chief to the NID.

On cross-examination,[106] Ms. Flor testified that as Assistant Chief to the NID, she reviewed the report of ROs assigned to the case and found that the result of the investigation is proper, correct, and accurate; that prior to the issuance of the LOA, she supervised the conduct of the preliminary investigation against accused; that in the conduct of said preliminary investigation, they were able to obtain a certification from Philex and UBP, but did not have any discussion with Philex and UBP regarding the contents of the certification.

On redirect,[107] Ms. Flor clarified that as GS assigned to perform various tasks, she only relies on certifications, and did not have discussions with the person who issued the certifications.

Special Prosecutors Emmanuel S. Ferrer, Jr. and Sheryll P. Cacayuran filed their Formal Entry of Appearance[108] on October 16, 2017, attaching therein *DOJ Department Order No. 691*[109] dated October 7, 2010 designating them as special prosecutors to assist the State Prosecutors of DOJ in the prosecution of criminal cases involving violations of tax laws.

Thereafter, the prosecution presented its fourth witness, **RO Simpit**, on November 13, 2013, who testified[110] that she was part of the investigating team authorized to conduct investigation against accused *per* LOA[111]; that after issuance of the LOA, they issued a memorandum addressed to the CIR containing the results of their investigation; that their report was forwarded to the RATE Legal and Writing Group of the BIR for evaluation; that thereafter, the CIR issued a referral letter[112] dated November 4, 2010 and addressed to DOJ Secretary Leila M. De Lima for the filing of a complaint against accused; and that they executed a Joint Complaint Affidavit[113] against accused.

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[106] *Records, CTA Crim. Case No. O-251, Vol. 2, TSN, October 16, 2013,* pp. 952-960.
[107] *Id.* at 961-962.
[108] *Id., Formal Entry of Appearance,* pp. 969-970.
[109] *Id., Department Order No. 691,* pp. 971-972
[110] *Id., TSN, November 13, 2013,* pp. 988-993.
[111] *Id., Vol. 3, Exhibit "A," LOA,* p. 1249.
[112] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "II" and sub-markings, Referral Letter Signed by Former CIR Kim S. Jacinto-Henares,* pp. 1357-1358.
[113] *Id., Exhibit "JJ" and sub-markings, Joint Complaint Affidavit,* pp. 1359-1363.

RO Simpit further testified[114] that after filing the Joint Complaint Affidavit, they proceeded with the determination of accused's tax liabilities, based on documents gathered during the preliminary investigation; that they informed accused of their initial findings through a Notice of Informal Conference[115] ("NIC") which was served to accused through someone who acknowledged receipt thereof by signing[116] at the bottom portion of the receiving copy; that she could not remember how the person introduced himself to them; and that they simply concluded that he is an authorized representative of accused, without inquiring into said person's authority.

She testified[117] that after service of the NIC, they received a letter[118] dated May 13, 2011, signed by accused's counsel, Atty. Lentejas, stating that accused cannot submit to the request for an informal conference, and that accused already complied with the submission of documents since the issuance of the LOA; that thereafter, they issued a Memorandum[119] addressed to Estela V. Sales, Deputy Commissioner, recommending the issuance of a Preliminary Assessment Notice ("PAN") against accused; that the PAN[120] and Details of Discrepancies[121] were served to accused *via* registered mail[122] and by LBC[123]; that the PAN contained an assessment for deficiency income taxes for TYs 2008 and 2009 in the amounts of Php6,666,607.09 and Php12,783,564.28, respectively; that these amounts were derived based on the certifications obtained from SSS, Philex and UBP *vis-à-vis* the ITR filed by accused; and that they found a discrepancy of more than thirty percent (30%). Thereafter, they issued a Memorandum[124] dated June 13, 2011 recommending the issuance of an FLD and a Final Assessment Notice ("FAN") against accused; that the FLD[125], together with the Details of Discrepancies[126], and FAN[127], were issued to accused; that the FLD was personally

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[114] *Records, CTA Crim. Case No. O-251, Vol. 2, TSN, November 13, 2013,* pp. 994-1000.
[115] *Id., Vol. 3, Exhibit "Y," Notice of Informal Conference ("NIC"),* p. 1317.
[116] *Id., Exhibit "Y-1," Signature of Accused's Representative,* p. 1317.
[117] *Id., Vol. 2, TSN, November 13, 2013,* pp. 1000-1006.
[118] *Id., Vol. 3, Exhibit "Z" and sub-markings, Letter Re: NIC Dated May 13, 2011,* pp. 1318-1319.
[119] *Id., Exhibit "SS," Memorandum,* pp. 1407-1409.
[120] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "AA" and sub-markings, Preliminary Assessment Notice ("PAN"),* pp. 1320-1321.
[121] *Id., Exhibit "BB" and sub-markings, Details of Discrepancies,* pp. 1321-1322.
[122] *Id., Exhibit "AA-3," Registry Receipt,* p. 1320.
[123] *Id., Exhibit "AA-4," Return Card,* p. 1320.
[124] *Id., Exhibit "DD" and sub-markings, Memorandum,* pp. 1337-1338.
[125] *Id., Exhibit "EE" and sub-markings, FLD,* pp. 1339-1340.
[126] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibits "FF" and sub-markings, Details of Discrepancies,* pp. 1341-1342.
[127] *Id., Exhibit "GG" and sub-markings, Final Assessment Notice ("FAN"),* pp. 1343-1344.

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served[128] to accused on July 26, 2011; and that accused filed his protest[129] to the FLD on August 18, 2011.[130]

On cross-examination,[131] RO Simpit stated that she did not have any discussion with Ms. Ella of SSS, Mr. Renato Migriño ("Mr. Migriño") of Philex, and Ms. Rubio of UBP, as to the contents of the certifications they issued; that they could not determine how and in what form accused received the income reflected therein; and that she is aware that accused made two (2) voluntary payments of his supposed tax liabilities for TYs 2008 and 2009.

On re-direct,[132] RO Simpit repeated that they did not verify the information contained in the certifications since the LOA covers only accused. She explained that they presumed that these were issued in the regular performance of duty; and that even if the two (2) payments made by accused were to be considered, there would still be underdeclaration of accused's income beyond the thirty percent (30%) threshold.

On re-cross,[133] RO Simpit testified that the two (2) payments made by accused were actually considered in the computation of his deficiency income tax in the FLD; and that she is aware of the finding of the DOJ that the cash method used by accused is correct as compared to the accrual method used by the BIR.

As prayed for, a *Subpoena Ad Testificandum and Duces Tecum* were ordered to be issued against Ms. Ella of SSS, Mr. Migriño of Philex, and Ms. Rubio of UBP.[134]

Ms. Rubio's counsel filed his Special Entry of Appearance *Ad Cautelam*[135] on November 25, 2013. On even date, said counsel filed an Omnibus Motion to Defer Compliance to *Subpoena Duces Tecum*

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[128] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "EE-2," Signature of P03 Almosara,* p. 1339; *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "EE-3," Date of Receipt,* p. 1339.
[129] *Id., Exhibits "HH," and sub-markings, Protest to FLD,* pp. 1345-1356.
[130] *Id., Vol. 2, TSN, November 13, 2013,* pp. 1006-1014.
[131] *Id.* at 1014-1025.
[132] *Id.* at 1025-1030.
[133] *Id.* at 1030-1033.
[134] *Records, CTA Crim. Case No. O-251, Vol. 2, Minutes of Hearing Dated November 13, 2013,* p. 984.
[135] *Id., Special Entry of Appearance,* pp. 1069-1072.

and Ad Testificandum dated November 19, 2013[136], which was granted[137] by the Court during the November 27, 2013 hearing.

Another witness for the prosecution, **Ms. Rubio**, testified[138] that she issued a certification[139] on October 14, 2010 stating that accused received from UBP for TY 2009 *per diems* of Php1,400,000.00[140], and a profit share of Php15,431,036.51[141]; that the computation was based on the ledger, which is an official record of UBP; and that the Php1,400,000.00 amount was furnished by the Accounting Department of UBP, while the Php15,431,036.51 profit share was based on her records.

On cross-examination,[142] Ms. Rubio testified that she had no knowledge in so far as the information on the *per diems* received by accused since the same was supplied by the Accounting Department; that accused received the full amount of Php7,923,427.97 as his profit share for TY 2008; that there was express instruction from accused to tax only half of the profit share because the other half shall be remitted to the SSS; that she has no knowledge on whether the other half was actually remitted to the SSS; that UBP withheld taxes on one-half (1/2) of Php7,923,427.97, as well as on one-half (1/2) of Php15,431,036.51; that Php7,923,427.97 was given to accused in four (4) tranches, covered by four (4) checks, all issued in the name of accused as SSS nominee director, as follows: *(1)* first check dated December 18, 2008 in the amount of Php364,587.33; *(2)* second check dated February 26, 2009 in the amount of Php510,416.67; *(3)* third check dated March 17, 2009 in the amount of Php3,961,713.99, which is a gross amount; and *(4)* fourth check dated March 17, 2009 in the amount of Php3,086,713.99, also in gross.

Ms. Rubio also testified[143] that with respect to the profit share for TY 2009 in the amount of Php15,431,036.51, the same was covered by three (3) checks, all in gross amounts, *viz.*: *(1)* first check dated December 15, 2009 in the amount of Php875,000.00; *(2)* second check dated January 22, 2010 in the amount of Php7,715,518.26; and *(3)*

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[136] *Records, CTA Crim. Case No. O-251, Vol. 2, Omnibus Motion,* pp. 1073-1078.
[137] *Id., Minutes of Hearing Dated November 27, 2013,* p. 1079.
[138] *Id., Vol. 3, TSN, February 5, 2014,* pp. 1094-1100.
[139] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "I" and sub-markings, Certification from UBP Dated October 14, 2010,* pp. 1259-1260; *Accused's FOE, Folder 1, Exhibit "9," Certification from UBP Dated October 14, 2010.*
[140] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "I-3," Per Diems for TY 2009,* p. 1259.
[141] *Id., Exhibit "I-4," Profit Share for TY 2009,* p. 1259.
[142] *Id., TSN, February 5, 2014,* pp. 1100-1116.
[143] *Id.* at 1116-1117.

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third check also dated January 22, 2010 in the amount of Php6,840,518.26; and that only one-half (1/2) of the Php15,431,036.51 was subjected to tax.

Ms. Rubio's cross-examination continued on March 19, 2014,[144] when she clarified that all seven (7) checks issued to accused were in gross amounts; that for the TY 2008 profit share, UBP withheld fifteen percent (15%) taxes on the amounts of Php364,583.33, Php510,416.67, and Php3,086,713.99; that for the TY 2009 profit share, UBP also withheld fifteen (15%) taxes on the amounts of Php875,000.00 and Php6,840,518.26.

During the May 7, 2014 hearing,[145] Ms. Rubio identified *Exhibit* "10"[146]. On re-direct,[147] she testified that accused, as nominee director of SSS, is the payee of the four (4) checks representing the profit share for TY 2008.

Prosecution's sixth witness, **Mr. Yu**, identified the certification issued by Philex dated October 4, 2010 through Mr. Renato N. Migriño, previously marked as *Exhibit* "H," with sub-markings "H-1," and "H-2."[148]

On cross-examination,[149] Mr. Yu stated that the director's fees for TY 2008 in amount of Php2,043,888.00 and director's fees for TY 2009 in the amount of Php4,188,107.00 were paid to accused in April 2009 and April 2010, respectively; that Philex withheld fifteen percent (15%) tax on the compensation of accused; and that Philex also withheld fifteen percent (15%) tax on the gain from exercise of the stock option granted to accused.

Prosecution's last witness, **Ms. Ella**, testified[150] that she was the department manager of the GAD of SSS for the period June 15, 2010 to July 15, 2012; that she knows accused as the President and CEO of SSS during the period 2008 to 2010; and that she personally prepared

[144] *Records, CTA Crim. Case No. O-251, Vol. 3, TSN, March 19, 2014,* pp. 1141-E-1141-1141-I.
[145] *Id., May 7, 2014,* pp. 1167-1169.
[146] *Accused's FOE, Folder 1, Exhibit "10," 2008 Profit Sharing Distribution to the Board based on Adjusted Company Shareholdings ("2008 PS Distribution").*
[147] *Records, CTA Crim. Case No. O-251, Vol. 3, TSN, May 7, 2014,* pp. 1170-1173.
[148] *Id., TSN, May 21, 2014,* pp. 1190-1195.
[149] *Id.* at 1195-1205.
[150] *Id., TSN, June 25, 2014,* pp. 1226-g-1226-m.

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a certification[151] regarding the amounts received by accused as President and CEO of SSS from TYs 2008 to 2010.

On cross-examination,[152] Ms. Ella testified that accused remitted the amounts of Php7,715,518.26 and Php3,961,713.99 to SSS, and SSS Form R-6 was issued therefor; that she does not know whether these amounts represent one-half (1/2) of the director's fee received by accused from UBP; that the salary of accused was subjected to withholding tax; and that it is the GAD of SSS which determines which items of income of accused are taxable.

On re-direct,[153] Ms. Ella reiterated that accused remitted to SSS the amounts of Php7,715,518.26 and Php3,961,713.99 he received as director's fee from UBP; and that SSS withheld taxes only from the salaries received by accused but not from the director's fees.

Upon inquiry by the Court, Ms. Ella clarified[154] that the amounts appearing in the certification she issued pertaining to salaries, bonuses, and other cash gifts were based on the books of the company; and that the remittances made by accused for the amounts received from UBP were not subjected to withholding taxes.

After presentation of its witnesses, the prosecution filed its Formal Offer of Evidence[155] ("FOE") on July 15, 2014, offering *Exhibits* "A," "B," "B-1," "C" to "C-4," "D" to "D-2," "E" to "E-2," "F," "F-1," "G," "G-1," "H" to "H-2," "I" to "I-4," "J," "J-1," "K," "K-1," "L" to "L-5," "M" to "M-5," "N" to "N-5," "O," "O-1," "P" to "P-17," "Q" to "Q-7," "R," "R-1," "S," "S-1," "T," "T-1," "U," "U-1," "V" to "V-9," "W," "W-1," "X," "X-1," "Y," "Y-1," "Z," "Z-1," "AA" to "AA-4," "BB," "BB-1," "CC" to "CC-13," "DD," "DD-1," "EE" to "EE-3," "FF," "FF-1," "GG," "GG-1," "HH" to "HH-13," "II," "II-1," "JJ" to "JJ-4," "KK" to "TT," and "TT-1." Thereafter, accused filed his Comment on Formal Offer of Exhibits of the Prosecution[156] on August 5, 2014.

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[151] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibits "G," Certification from SSS Dated September 21, 2010,* p. 1256.
[152] *Id., TSN, June 25, 2014,* pp. 1226-m-1226-cc.
[153] *Id.* at 1226-cc-1226-hh.
[154] *Id.* at 1266-hh-1226-mm.
[155] *Id., Prosecution's FOE,* pp. 1230-1248.
[156] *Id., Comment on Prosecution's FOE,* pp. 1411-1412.

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On August 26, 2014, the Court resolved[157] to admit the documentary evidence of the prosecution, subject to the Court's final evaluation and/or appreciation of their probative value to the issues involved in the case, except for *Exhibits* "L" to "L-4" and "L-5," for failure of the prosecution to have the same identified. The Court also noted that *Exhibits* "BB" to "BB-1" described in the FOE as "Original of the Details of Discrepancies attached as Annex of the PAN dated 21 May 2011 issued against ROMULO L. NERI, consisting of two (2) pages" actually refer to the "Original of Details of Discrepancies attached as Annex A of the PAN dated 12 May 2011."[158]

During the hearing on August 27, 2014,[159] the initial presentation of evidence for accused was reset to October 8, 2014, pursuant to the Amended PTO.

For the defense, it presented its lone witness, accused **Romulo L. Neri**, who testified[160] that he is the same Romulo L. Neri who is the accused in the consolidated cases; that it is not true that he did not respond to all requests of the BIR for presentation of records, as testified by RO Saga; that he responded to the LOA and submitted a machine copy of his Annual ITR for TYs 2004, 2005, 2006, 2007, 2008 and 2009, as evidenced by a handwritten list[161] stamped "received" by the BIR on October 14, 2010; that after receipt of the LOA, his accountant communicated with Ms. Flor, who stated that she will request for a meeting, but did not call again; and that after receipt of the Second Notice[162] on March 25, 2011, he sent a letter[163] addressed to RO Saga stating that he already complied with the request, but nevertheless, submitted the requested documents again if only to comply with the Second Notice.

Accused further testified[164] that he was a bit confused when he received the NIC[165] dated May 11, 2011, considering that the BIR has already submitted his case to the DOJ for the filing of a criminal

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[157] *Records, CTA Crim. Case No. O-251, Vol. 3, Resolution,* pp. 1414-1415.
[158] *Id.* at 1415.
[159] *Records, CTA Crim. Case No. O-251, Vol. 3, Minutes of Hearing Dated August 27, 2014,* p. 1417; *Records, CTA Crim. Case No. O-251, Vol. 3, Confirming Resolution,* pp. 1419-1420.
[160] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 8, 2014,* pp. 1429-1434.
[161] *Accused's FOE, Folder 1, Exhibit "132," List of Documents Submitted on October 14, 2010.*
[162] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "D," Second Request for Presentation of Records Dated March 21, 2011,* p. 1253.
[163] *Accused's FOE, Vol. 1, Exhibit "133" and sub-markings, Letter Addressed to Mr. Gerry E. Saga Dated March 30, 2011.*
[164] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 8, 2014,* pp. 1434-1436.
[165] *Id., Exhibit "Y," NIC,* p. 1317.

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complaint; that he asked his lawyer to write a letter-reply[166] to inform the BIR that he could not submit to their request for informal conference due to the circumstances; and that upon receipt of the PAN, FAN and FLD, he filed his protest[167].

Referring to the schedule in page 19 of the DOJ Resolution dated May 6, 2011[168] pertaining to his income for TY 2008, accused stated that there is no discrepancy in his income from CHED and Philhealth; that with respect to the Php8,000.00 discrepancy in his Philex income, he believe that this pertains to a check which he refused to accept during a board meeting where he walked out; that as regards his income from SSS, Ms. Ella issued a certification[169] dated November 22, 2010 attaching therein a table which shows which part of his income are taxable and non-taxable; that the discrepancy of Php438,000.00 may refer to representation expenses duly supported by receipts, hence, were not subjected to tax; and that it also includes GSIS Life Insurance, Pag-ibig and Philhealth contributions, Christmas bonus, performance bonus, and cash gift.[170] Thereafter, counsel for accused moved for continuance on the ground that the next part of accused's testimony will be about his compensation from UBP, which would be lengthy.

As manifested during the hearing, accused filed a Submission of Tables Showing the Summary of the Defense of the Accused[171] ("Schedule of UBP Income") on October 20, 2014.

Accused's direct testimony continued on October 22, 2014,[172] where he identified *Exhibit* "1-a"[173]. He testified that there is no difference in the amounts of his gross income, net taxable income, and income tax withheld *per* BIR Form No. 2316 and *per Exhibit* "N-3"[174] of the prosecution; that these amounts are consistent with the certification issued by Ms. Ella; that as regards his UBP income, the discrepancy may pertain to profit share; and that the BIR erroneously

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[166] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Z" and sub-markings, Letter Re: NIC Dated May 13, 2011,* pp. 1318-1319.
[167] *Records, CTA Crim. Case No.O-251, Vol. 3, Exhibit "CC" and sub-markings, Protest to PAN,* pp. 1324-1336; *Exhibit "HH" and sub-markings, Protest to FLD,* pp. 1345-1356.
[168] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "QQ," DOJ Resolution Dated May 6, 2011,* pp. 1374-1406; *Accused's FOE, Folder 1, Exhibit "6," DOJ Resolution Dated May 6, 2011.*
[169] *Accused's FOE, Folder 1, Exhibit "21," and sub-markings, Certification Issued by SSS Dated November 22, 2010.*
[170] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 8, 2014,* pp. 1436-1449.
[171] *Id., Schedule of UBP Income,* pp. 1458-1469.
[172] *Id., TSN, October 22, 2014,* pp. 1470-H-1470-1470-AAAA.
[173] *Id., Exhibit "1-a," BIR Form No. 2316 for TY 2008,* p. 1661.
[174] *Id., Vol. 3, Exhibit "N-3," Attachment to Amended Annual ITR of Accused for TY 2008,* p. 1276.

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misinterpreted that the amount of Php7,923,427.97 was received by him in full in 2008, but in fact, half of said amount was remitted to SSS, and much of the rest was received only in 2009.

In reconciling his income received from UBP for TY 2008 and referring to Table 3[175] of Schedule of UBP Income, accused explained that the Php8,333,827.00 amount considered by the BIR as his income can be broken down into: *(1)* Php7,923,427.97 profit share, where most was received by him only in 2009 when the profit of UBP has already been determined; and *(2)* Php410,000.00 *per diem*. According to accused, only Php364,583.00[176] representing profit share was received by him in December 19, 2008[177]; thus, his income in TY 2008 should be Php774,983.00; that since he declared Php408,600.00 in his 2008 Amended ITR, the actual discrepancy should only be Php366,383.00, which may pertain to *per diem*. He also testified that the *per diem* was not subjected to withholding taxes, and that upon inquiry with UBP on the reason for non-withholding, it was represented to him that UBP was under the impression that *per diems* of government employees were not subject to tax; and that he could not remember who among the accountants of UBP or Ms. Rubio told him that.

Accused further testified that after realizing the discrepancy, his lawyer, Atty. Domingo, on his behalf, sent a letter[178] to the BIR informing them that he is ready and willing to pay deficiency taxes in the amount of Php114,310.25 for TY 2008 and Php496,656.97 for TY 2009; that, in response thereto, the BIR, through Atty. Sixto Dy sent a letter-reply[179] advising accused that he may make voluntary tax payments; and that a similar letter[180] signed by RDO Clavelina S. Nacar ("RDO Nacar") was received by accused. Accordingly, accused's accountant proceeded to make the voluntary payment in the amounts of Php114,310.25[181] and Php496,656.97[182]; and that the amounts paid were computed by his accountant and the BIR.

Accused explained that *Exhibit* "10," entitled 2008 Profit Sharing Distribution to the Board Based on Adjusted Company

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[175] *Records, CTA Crim. Case No. O-251, Vol. 4, Schedule of UBP Income,* p. 1465.
[176] *Accused's FOE, Folder 1, Exhibit "10-b," 2008 PS Distribution.*
[177] December 18, 2008 *per* TSN, October 22, 2014.
[178] *Accused's FOE, Folder 2, Exhibit "23," Letter Dated May 16, 2011.*
[179] *Id., Exhibit "24," Letter-Reply Dated May 17, 2011.*
[180] *Id., Exhibit "24-c," Letter Dated May 25, 2011.*
[181] *Id., Exhibits "25" and "26," Proof of Payment of Php114,310.25.*
[182] *Id., Exhibits "25" and "26," Proof of Payment of Php496,656.97.*

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Shareholdings ("2008 PS Distribution"), is a document given to directors of UBP, including himself, detailing the amounts of profit share each director shall receive, as well as the dates of receipt; and that the amount of Php7,923,427.97 was distributed in this manner: *(1)* Php364,583.00 (Php309,895.83 net) on December 19, 2008; *(2)* Php510,895.83 (Php433,854.17 net) on February 27, 2009; *(3)* Php2,623,706.89 on March 17, 2009 (balance after deducting Php309,895.83 and Php433,854.17 from Php3,367,456.89); and *(4)* Php3,961,713.99, which represents the share of SSS. According to him, all checks representing his share are net of taxes, while that of SSS is the gross amount. Thus, out of the Php7,923,427.97 claimed by the BIR as his profit share earned in TY 2008, only Php364,583.00 was actually received by him in 2008, and the rest in 2009; and that only one-half (1/2) of said Php7,923,427.00 is his share as the other half is for SSS.

Referring to Table 2[183] of Schedule of UBP Income, accused explained that Php7,923,427.97 can thus be accounted for as follows: *(1)* Php309,895.83, net of fifteen percent (15%) tax received on December 19, 2008; *(2)* Php433,854.17, net of fifteen percent (15%) tax received on February 27, 2009; *(3)* Php2,623,706.89, net of fifteen percent (15%) tax received on March 17, 2009; *(4)* Php594,257.09 total taxes withheld by UBP; and *(5)* Php3,961,713.99 representing the amount remitted to SSS, as evidenced by SSS Form R-6[184] and the certification[185] issued by Ms. Ella.

During the continuation of accused's direct testimony on January 21, 2015,[186] accused explained his income for TY 2009[187]. As regards his income from SSS, accused stated that his actual taxable income is only Php1,306,219.37, as shown in the attachment to the certification[188] issued by Ms. Ella on November 22, 2010, and BIR Form No. 2316[189] issued by SSS; that the representation allowance of Php157,500.00[190] was treated as a non-taxable item by SSS because it is subject to liquidation, and must be supported by receipts, and therefor effectively treated as a reimbursement; and that the

[183] *Records, CTA Crim. Case No. O-251, Vol. 4, Table 2, Schedule of UBP Income,* pp. 1463-1464.
[184] *Accused's FOE, Folder 1, Exhibit "14," SSS Form R-6.*
[185] *Id., Exhibit "21," and sub-markings, Certification Issued by SSS Dated November 22, 2010.*
[186] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, January 21, 2015,* pp. 1477-d-1477-yy.
[187] *Id.* at 1466.
[188] *Accused's FOE, Folder 1, Exhibit "21-b," Attachment to Certification Issued by SSS Dated November 22, 2010.*
[189] *Accused's FOE, Folder 1, Exhibit "22," BIR Form No. 2316; Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "X," BIR Form No. 2316,* p. 1316.
[190] *Accused's FOE, Folder 1, Exhibit "21-b," Attachment to Certification Issued by SSS Dated November 22, 2010.*

Extraordinary & Misc. Expense of Php750,000.00[191] was not subjected to tax since he thinks it is common to all government offices.

With respect to his income from UBP, accused testified[192] that he does not know how BIR arrived at the Php20,792,750.50 amount, which it claims is his income for TY 2009; that the amount of Php3,961,713.99, which was double counted by the BIR, should be deducted; that said amount could be traced from the lower portion of the certification[193] dated September 21, 2010 issued by Ms. Ella as the amount he remitted to SSS on March 18, 2009, thus, BIR construed said amount as his additional income in 2009, when the same has already been considered by the BIR as his income in 2008; and thus, the starting point of the reconciliation should be Php16,831,036.51, which is the sum of Php1,400,000.00 *per diems* and Php15,431,036.51 profit share, consistent with the certification[194] from UBP.

Proceeding with his reconciliation, accused, in reference to *Exhibit* "11"[195] entitled 2009 Profit Sharing Distribution to the Board based on Adjusted Company Shareholdings ("2009 PS Distribution"), explained that the amount of Php15,431,036.51 represents total profit share he received for TY 2009, but half of it or the amount of Php7,715,518.26 was remitted to SSS on January 22, 2010, as evidenced by SSS Form R-6[196], and most of the balance was received by him only in 2010. He explained that the Php7,715,518.26 amount remitted to SSS was not subjected to withholding tax, but the other half, which he received, was subjected to fifteen percent (15%) withholding tax. Accused clarified that his one-half (1/2) share in the Php15,431,036.51, was received by him, first in the amount of Php875,000.00 in December 18, 2009, and the balance of Php6,840,518.26 in 2010. In addition, accused testified that there is no discrepancy in his income from Philhealth. For lack of material time, the case was then set for continuance on March 4, 2015.

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[191] *Accused's FOE, Folder 1, Exhibit "21-b," Attachment to Certification Issued by SSS Dated November 22, 2010.*

[192] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, January 21, 2015,* pp. 1477-gg.

[193] *Id., Vol. 3, Exhibits "G," Certification from SSS dated September 21, 2010,* p. 1256.

[194] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "I" and sub-markings, Certification from UBP Dated October 14, 2010,* pp. 1259-1260; *Accused's FOE, Folder 1, Exhibit "9," Certification from UBP Dated October 14, 2010.*

[195] *Accused's FOE, Folder 1, Exhibit "11," 2009 Profit Sharing Distribution to the Board Based on Adjusted Company Shareholdings ("2009 PS Distribution").*

[196] *Id., Exhibit "16," SSS Form R-6.*

During the continuation of accused's direct testimony on March 4, 2015,[197] accused clarified that he deducted Php15,431,036.51 first and thereafter added Php875,000.00 from his reconciliation under Table 3[198] of Schedule of UBP Income, since only Php875,000.00 was actually received in 2009; that he added Php7,923,427.97 and deducted Php364,583.00 and Php3,961,713.98 to account for the amount of profit share from TY 2008 which were received by him only in 2009; and thus, his actual income from UBP for TY 2009 is only Php5,872,130.00.

Proceeding further, accused testified that UBP belatedly gave him his BIR Form No. 2307[199] which reflected his total income for TY 2009 in the amount of Php4,472,130.65, thus, was not considered when he filed his ITR. According to him, upon receipt of said BIR Form No. 2307, he made a reconciliation of the total amount he received from UBP and found out that his *per diems* in the amount of Php1,400,000.00 was not subjected to tax; and after finding said discrepancy, he made voluntary payments; and that in his protests to the PAN[200] and the FLD[201], he explained to the BIR the breakdown of the Php4,472,130.65 amount.

Accused admitted that the amount declared in his Amended 2009 ITR[202] as his income from UBP for TY 2009 is missing two (2) items: *(1)* Php875,000.00 profit share received in 2009; and *(2)* Php463,007.09 representing tax withheld on Php3,086,713.99, which his accountant failed to take into consideration.

As regards the Php1,400,000.00 *per diems* from which UBP failed to withhold tax, accused testified that he voluntarily paid the pertinent tax thereof amounting to Php496,656.97, as evidenced by BIR Form No. 0605[203] and deposit slip[204].

Referring now to Table 5[205] of Schedule of UBP Income, accused accounted for the Php4,472,130.65, thus: *(1)* Php510,416.67 profit

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[197] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* pp. 1481-h-1481-zz.
[198] *Id., Table 3, Schedule of UBP Income,* p. 1465.
[199] *Accused's FOE, Folder 1, Exhibit "12," BIR Form No. 2307.*
[200] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "CC" and sub-markings, Protest to PAN,* pp. 1324-1336.
[201] *Id., Exhibit "HH" and sub-markings, Protest to FLD,* pp. 1345-1356.
[202] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q," Amended 2009 ITR,* p. 1296; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2," Amended 2009 ITR,* pp. 1664-1670.
[203] *Accused's FOE, Folder 2, Exhibit "28," Payment Form.*
[204] *Id., Exhibit "29," Deposit Slip.*
[205] *Records, CTA Crim. Case No. O-251, Vol. 4, Table 5, Schedule of UBP Income,* p. 1469.

share received on February 27, 2009; *(2)* Php2,623,706.89 profit share received on March 17, 2009; *(3)* Php875,000.00 profit share received on December 18, 2009; and *(4)* Php463,007.09 withholding tax. For lack of material time, the case was set for the continuance of accused's testimony on April 22, 2015.[206]

During the continuance of accused's direct testimony on April 22, 2015,[207] accused testified that the Php6,840,518.26 amount was received by him on January 2, 2010, and was declared in his 2010 ITR[208], which amount can be traced in Note 4[209] of the 2010 Audited Financial Statement ("AFS") attached to the 2010 ITR.

As regards accused's income from Philex for TY 2009, accused testified that he found it a little strange for the BIR to claim that he declared Php10,693,196.80, when he in fact declared the amount of Php9,333,195.00[210].

On cross-examination,[211] accused clarified that the profit share he received in 2008, and most of it in 2009, was computed based on profits generated by UBP in TY 2008; that he is using the cash basis of accounting in reporting his income; that the balance sheet which shows entries of "Accounts Receivable" was prepared by his accountant and that he had no hand in its preparation; that said balance sheet was part of the attachment in his ITR; that the one who determines whether bonuses and allowances received from SSS are taxable or not is the accounting department of SSS; that he discovered the discrepancy pertaining to his *per diems* when he was being investigated on by the BIR; that he paid the tax thereon on May 31, 2011, which was before the present criminal cases were filed against him; and that he cannot recall whether the voluntary payments were made after the cases were filed against him by the BIR to the DOJ.

Further, accused testified that the profit share from UBP were issued in several tranches, covered by four (4) checks, and all issued in his name, including that which is intended for SSS; that the remittance of one-half (1/2) to SSS is based only on practice of the Board of Directors ("BOD") of SSS; that he declared the profit share

[206] *Records, CTA Crim. Case No. O-251, Vol. 4, Resolution,* pp. 1483-1484.
[207] *Id., TSN, April 22, 2015,* pp. 1485-e-1485-r.
[208] *Id., Exhibit "3," 2010 ITR,* p. 1671.
[209] *Id., Exhibit "3-a," Note 4 2010 AFS,* p. 1684.
[210] *Id., Exhibit "2-1," Total Income from Philex,* p. 1669.
[211] *Id., TSN, July 8, 2015,* pp. 1497-1523.

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in his ITR, excluding the share of SSS, despite being already subjected to fifteen percent (15%) withholding tax; and that he reports the profit share in his ITR depending on the year he actually received them.

Accused clarified that despite entries of "Accounts Receivable" in the AFS, he did not declare the profit share for TY 2008 as accounts to be received in 2009, since at the time he filed his ITR, he could not yet determine the amount he will actually receive; and that as to the allowances, the same are always subject to liquidation, otherwise, the allowance will not be issued.

During the continuance of accused's cross examination on September 9, 2015,[212] accused reiterated that the determination of which of his income from SSS is taxable and non-taxable is made by the accounting department of SSS; that he receives profit share from UBP for being a member of the BOD; that he is unaware whether the certification issued by SSS stating which is taxable or not is backed by any BIR Ruling; that he relied on said determination of SSS; that the representation expenses and miscellaneous expense were not subjected to tax since these are subject to liquidation; that he is not aware whether there is a ceiling prescribed by the *1997 NIRC* on these expenses; that for profit sharing, he believes that it is based on one-half and one percent (1½%) of the total profits at the end of the year; that total profits are made known to them only about February or March of the succeeding year; that by the time he filed his ITR for TY 2009 on April 15, 2010, he already knows his profit share; however, since he is using the cash accounting method, only those received in 2009 are declared in his 2009 ITR; and that said accounting method is consistent with the withholding tax certificates he is receiving.

On the reconciliation of his income from UBP for TY 2009, accused explained that what he did was deduct the amount of his profit share for TY 2009 and add back only those amounts actually received by him; that the amounts remitted to SSS were not included in the computation; that when he received the LOA, he re-computed his taxes due, and upon finding a deficiency, he made voluntary payment; that said payment was of his own volition without any demand from the BIR; and that he started re-computing his tax liabilities and made reconciliations when the Senate investigation began.

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[212] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, September 9, 2015,* pp. 1534-1567.

Accused also testified that while his ITR was prepared by his accountant, he did some checking but did not go into details; that he merely relied on his accountant, as well as the withholding tax certificates issued to him, without verifying all the details; and that it was him who signed the ITR.

Accused's cross-examination was continued on October 21, 2015.[213] He testified that after receipt of the LOA, he made voluntary payments on May 21, 2011 for *per diems* for TYs 2008 and 2009 which were not subjected to withholding taxes by UBP; and that in making his reconciliations, he used the initial assessment of the BIR as well as the certifications from SSS and UBP, and his ITR.

On re-direct[214], accused clarified that the name of his accountant is Ellen Yturiaga. He also identified *Exhibit* "134"[215] which details the reconciliation he made on the testimony of Ms. Rubio. Accused also explained that the tables appearing in the Schedule of UBP Income are part of his protests to the PAN and FLD/FAN previously filed with the BIR.

On re-cross[216], accused testified that he filed his protest to the PAN on June 2, 2011, and the protest to the FLD on August 18, 2011; and that the protests were filed after he was being investigated on by the BIR.

When asked by the Court for clarification,[217] accused stated that he presumes that it is UBP who should pay his taxes; that he started making reconciliations of his income and had meetings with UBP personnel when the Senate investigation began, even prior to receipt of the LOA from the BIR; that with respect to the profit share, although all checks were issued in his name, half of it was not subjected to withholding tax since the same is for SSS; and that only his *per diems* were not subjected to taxes.

On March 30, 2016,[218] counsel for accused manifested that he would no longer present the other witnesses listed in the Pre-Trial

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[213] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 21, 2015,* pp. 1577-1584.
[214] *Id.* at 1585-1590.
[215] *Accused's FOE, Folder 1, Exhibit "134," Handwritten Summary by Accused.*
[216] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 21, 2015,* pp. 1590-1594.
[217] *Id.* at 1594-1599.
[218] *Id., Minutes of Hearing dated March 30, 2016,* p. 1611.

Order. Thereafter, after being granted an extension,[219] accused filed his Formal Offer of Exhibits[220] on May 2, 2016, offering *Exhibits* "1," "1-a," "1-c," "1-d," "2," "2-a," "3," "3-a," "6," "9" to "21," "21-a," "21-b," "22," "23," "23-a," "23-b," "24," "24-a" to "24-c," "25" to "130," "130-a," 132," "133," "133-a," and "134," to which the prosecution failed to file any comment or opposition *per* Records Verification Report[221] issued by the Judicial Records Division dated May 24, 2016.

On June 14, 2016, the Court resolved[222] to admit accused's exhibits subject to the Court's final evaluation and appreciation of their purpose, materiality, relevancy, and probative value to the issues involved in the case. However, it denied *Exhibits* "1-c," "11" to "13," "15," "17" to "20," "27," and "30" for failure to present the originals for comparison. Thereafter, the Court ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof.

After being granted an extension,[223] accused filed his Memorandum for Accused Romulo L. Neri[224] on August 26, 2016. On the other hand, the prosecution failed to file its memorandum *per* Records Verification Report[225] of the Judicial Records Division dated July 26, 2016.

In a Resolution[226] dated September 2, 2016, the case was deemed submitted for decision; hence, this Decision.

The Issues[227]

WHETHER OR NOT ACCUSED VIOLATED *SECTION 255* IN RELATION TO *SECTIONS 24 AND 74 OF THE 1997 NIRC* FOR TYS 2008 AND 2009; AND

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[219] *Records, CTA Crim. Case No. O-251, Vol. 4, Motion for Extension to File FOE,* pp. 1620-1622; *Records, CTA Crim. Case No. O-251, Vol. 4, Resolution,* p. 1625.
[220] *Records, CTA Crim. Case No. O-251, Vol. 4, Accused's FOE,* pp. 1627-1794.
[221] *Id., Records Verification Report,* p. 1795.
[222] *Id., Resolution,* pp. 1797-1798.
[223] *Records, CTA Crim. Case No. O-251, Vol. 4, Motion for Extension of Time to File Memorandum,* p. 1800-1802; *Records, CTA Crim. Case No. O-251, Vol. 4, Resolution,* p. 1804.
[224] *Records, CTA Crim. Case No. O-251, Vol. 4, Memorandum for Accused Romulo L. Neri.*
[225] *Id., Records Verification Report,* p. 1799.
[226] *Id., Resolution,* p. 1805.
[227] *Id., Amended PTO, Legal Issues,* p. 838.

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WHETHER OR NOT ACCUSED COULD BE PROPERLY CHARGED AND TRIED FOR TAX EVASION DESPITE THE ABSENCE OF ANY FINAL TAX ASSESSMENT MADE BY THE BIR.

On one hand, the prosecution raised the following factual issues:[228]

1. Whether or not accused, as President and CEO of SSS, received salaries, bonuses, representation allowance, and other allowances in the amount of Php950,291.00 for TY 2008 and the amount of Php2,427,419.37 for TY 2009;

2. Whether or not accused, as member of the BOD of Philex, received profit share, director's fees, and *per diems* for attendance during board meetings in the amount of Php2,067,888.00 for TY 2008 and the amount of Php10,701,677.00 for TY 2009;

3. Whether or not accused received the PAN, together with attachments, on May 21, 2011;

4. Whether or not accused received the FLD/FAN, together with attachments, on July 26, 2011;

5. Whether or not accused received income in the total amount of Php11,352,006.97 from SSS, Philex, and UBP for TY 2008; and

6. Whether or not accused received income in the total amount of Php34,212,471.87 from SSS, Philex, UBP, and Philhealth for TY 2009.

Accused, on the other hand, raised the following factual issues:[229]

1. Whether or not one-half (1/2) of accused's UBP Profit Share for TYs 2008 and 2009 (in the respective sums of Php7,923,427.96 and Php15,431,036.52) were in fact remitted to SSS;

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[228] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended PTO, Factual Issues,* p. 838.
[229] *Id.* at 839.

2. Whether or not the sum of Php3,597,130.95 portion of accused's TY 2008 profit share was actually received by him in 2009;

3. Whether or not the sum of Php6,840,518.27 portion of accused TY 2009 profit share was received by him in 2010;

4. Whether or not the specific sums reflected in the certifications of Ms. Ella as contributions to government agencies for GSIS premiums, Pag-Ibig, and Philhealth contributions for TYs 2008 and 2009 were in fact paid to those government agencies;

5. Whether or not the specific sums reflected in the certifications of Ms. Ella as 13th month pay, performance bonus or cash gift, Personnel Economic Relief Allowance (PERA), and rice subsidy for TYs 2008 and 2009 were in fact given to accused as *de minims* benefits and were not subjected to income tax;

6. Whether or not the specific sums reflected in the certifications of Ms. Ella as representation allowance, and extraordinary and miscellaneous expenses of accused as SSS President and CEO for TYs 2008 and 2009 were in fact actually treated, considered, and actually not subjected to income tax by SSS; and

7. Whether or not accused made two (2) voluntary payments after the case was filed with the DOJ in the sums of Php496,656.97 for the tax discrepancy of Php1,360,000.00 for 2009 income in CTA Crim. Case No. O-251, and Php114,310.25 for the tax discrepancy of Php393,600.00 for 2008 income in CTA Crim. Case No. O-252.

The Arguments of the Prosecution[230]

The prosecution alleges that accused is guilty of violation of *Section 255* in relation to *Sections 24 and 74 of the 1997 NIRC* for willful, unlawful, and felonious failure to supply correct and accurate information as to his total income when he declared only Php1,352,614.00 instead of Php9,723,841.97 in his 2008 ITR, resulting to a discrepancy of Php8,371,229.97, or eighty-six percent (86%)

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[230] *Records, CTA Crim. Case No. O-252, Information,* pp. 5-118, with annexes; *Records, CTA Crim. Case No. O-251, Vol. 2, Amended Information,* pp. 538-540.

underdeclared income; and only Php15,424,164.73 instead of Php32,068,252.87 in his 2009 ITR, resulting to a discrepancy of Php16,644,088.14, or fifty-two percent (52%) underdeclared income; and that accused should have annualized his income because by using "Accounts Receivable" in the AFS, he is considered to have employed the accrual method of accounting.

The Arguments of the Defense[231]

Accused claims that the criminal charges of the BIR are all false and unfounded and are not borne out by the facts of the case, as proven by the defenses presented by accused.

For TY 2008, accused avers that: *(1)* for the SSS income, prosecution's witness, Ms. Ella, sufficiently explained how SSS determined accused's income subject to tax; *(2)* for the UBP income, the profit share for TY 2008 amounting to Php7,923,427.97 was not received by him in full during 2008, for only small portion thereof, that is, Php309,895.33 (Php364,583.33 gross), was received in 2008, the rest, Php422,854.27 (Php510,416.67 gross) plus Php2,623,706.89 (Php3,086,713.89 gross), was received during the succeeding year, and substantially declared in his 2009 Amended ITR, and one-half (1/2) of which, or Php3,961,713.98, was actually remitted to SSS; that the discrepancy should only be Php366,383.00, for which he voluntarily paid the deficiency tax of Php114,310.25; and *(3)* for the Philex income, the Php8,000.00 discrepancy represents erroneous reporting of Philex as part of his income; and that in any case, said amount may have been reported in his 2009 Amended ITR.

For TY 2009, accused claims that: *(1)* for the SSS income, prosecution's witness, Ms. Ella, sufficiently explained how SSS determined accused's income subject to tax; that as President and CEO of SSS, he is entitled to rely upon the work of his subordinates; that the prosecution is bound to recognize the veracity and correctness of the determinations made by Ms. Ella, being its witness; that he acted in good faith in relying upon the work and certifications of his subordinates; *(2)* for the UBP income, only Php875,000.00 of his profit share for TY 2009 was actually received in 2009, and the rest was received in 2010; that half of the profit share, or Php7,715,518.26, was remitted to SSS; that the BIR erroneously included the Php3,961,713.98 amount in his income for TY 2009 when the same

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[231] *Records, CTA Crim. Case No.O-251, Vol. 4, Memorandum for Accused Romulo L. Neri.*

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represents half of the profit share for TY 2008 and was remitted to SSS; that since most of the profit share for TY 2009 was received in 2010, the same was declared in his 2010 ITR; that accused's accountant's failure to include the amounts of Php875,000.00 and Php463,007.09 was due to lack of details since the BIR Form No. 2307 was belatedly issued by UBP; that if there was any mistake in the drafting of his ITR, the same was committed by his accountant and that he is not bound by those mistakes or miscues; that he voluntary paid deficiency tax on the discrepancy in the amount of Php496,656.97; and *(3)* for the Philex income, accused declared income more than that which the BIR claims as his income, hence there is no probable cause, or factual basis to support the charge of tax evasion against him.

Accused avers further that he used the cash method where he reported his income depending on the date he received them; that contrary to the prosecution's allegation that he is bound to use the accrual method of accounting and reporting of his income, it is a well-entrenched policy or doctrine of income tax law that individual taxpayers earning compensation, fees, salaries, wages, *etc.*, are covered by the cash method of accounting; that the accrual method could not be applied to the profit share income from UBP since it could not be determined with definite accuracy; and that the prosecution's insistence that his act of attaching an AFS to his ITR is fatal and crucial to him is baseless and wrong since this was done solely to comply with *Section 232 of the 1997 NIRC.*

Accused posits that granting without conceding that he is wrong in adopting the cash method of accounting, he acted in good faith when he relied on his accountant in keeping his income records and in making his ITRs; that what is important is that he did not hide any of said income, but actually declared them in the periods he received them as covered by various withholding statements issued to him; and that, clearly, he did not willfully, maliciously, or fraudulently conceal or evade said income taxes for TYs 2008 and 2009.

The Evidence Presented

The Evidence for the Prosecution[232]

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[232] *Records, CTA Crim. Case No. O-251, Vol. 3, Prosecution's FOE,* pp. 1230-1247.

EXHIBITS	DESCRIPTION
Exhibit "A"	LOA SN: eLA201000015025 LOA-211-2010-00000231 dated September 24, 2010 issued to RO Sante, RO Simpit, GS Flor, and received by accused on September 25, 2010
Exhibit "B"	Name and signature of accused's representative who received the LOA
Exhibit "B-1"	Date of receipt of LOA
Exhibits "C" to "C-2"	Letter-request for presentation of records ("Letter-request") received by accused on September 25, 2010
Exhibit "C-3"	Name and signature of accused's representative who received the letter-request
Exhibit "C-4"	Date of receipt of letter-request
Exhibit "D"	Second Request for Presentation of Records ("Second Notice") signed by RO Saga, dated March 21, 2011 and received by accused on September 25, 2011
Exhibit "D-1"	Name and signature of accused's representative who received the Second Notice
Exhibit "D-2"	Date of receipt of Second Notice
Exhibit "E"	Final Notice for presentation of records signed by Sixto C. Dy, Jr., OIC-Chief, NID dated April 11, 2011 and received by accused on April 12, 2011
Exhibit "E-1"	Name and signature of accused's representative who received the Final Notice
Exhibit "E-2"	Date of receipt of Final Notice
Exhibit "F"	Access Letter dated September 13, 2010 addressed to Mr. Emilio S. De Quiros, President and CEO of SSS
Exhibit "F-1"	Name and signature of Atty. Sixto C. Dy, Jr., OIC-Chief, NID
Exhibit "G"	Certification from SSS dated September 21, 2010 issued by Ms. Ella, Department Manager, GAD of SSS
Exhibit "G-1"	Name and signature of Ms. Ella
Exhibits "H" to "H-1"	Certification from Philex dated October 4, 2010 issued by Mr. Migriño, Treasurer, CFO and VP-Finance of Philex
Exhibit "H-2"	Name and signature of Mr. Migriño
Exhibits "I" to "I-1"	Certification from UBP dated October 14, 2010 issued by Ms. Rubio, First VP & Deputy Human Resource Director of UBP
Exhibit "I-2"	Name and signature of Ms. Rubio
Exhibit "I-3"	Amount of Php1,400,000.00 on column "*Per Diem*," seventh row
Exhibit "I-4"	Amount of Php15,431,03.51 on column "Profit Share," seventh row
Exhibit "J"	Certification dated September 1, 2010 issued by RDO Mailig of RDO No. 39
Exhibit "J-1"	Name and signature of RDO Mailig
Exhibit "K"	Certification dated April 11, 2012 issued by RDO Nacar of RDO No. 39
Exhibit "K-1"	Name and signature of RDO Nacar
Exhibit "L-5"	Signature of RDO Nacar
Exhibits "M" to "M-4"	Certified True Copy ("CTC") of Original ITR (BIR Form No. 1701) of accused for TY 2008, including attachments
Exhibit "M-5"	Name and signature of RDO Nacar
Exhibits "N" to "N-4"	CTC of Amended ITR (BIR Form No. 1701) of accused for TY 2008, including attachments
Exhibit "N-5"	Name and signature of RDO Nacar
Exhibit "O"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period September 1, 2008 to September 30, 2008
Exhibit "O-1"	Name and signature of RDO Nacar
Exhibits "P" to "P-16"	CTC of Original ITR (BIR Form No. 1701) of accused for TY 2009, including attachments
Exhibit "P-17"	Name and signature of RDO Nacar
Exhibits "Q" to "Q-5"	CTC of Amended ITR (BIR Form No. 1701) of accused for TY 2009, including attachments
Exhibit "Q-6"	Name and signature of RDO Nacar
Exhibit "Q-7"	Page 2 of Amended ITR (BIR Form No. 1701) for TY 2009
Exhibit "R"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period January 1, 2009 to December 31, 2009
Exhibit "R-1"	Name and signature of RDO Nacar
Exhibit "S"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Miguel Pure Foods Co. for the period March 2009

Exhibit "S-1"	Name and signature of RDO Nacar
Exhibit "T"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Miguel Pure Foods Co. for the period July 2009
Exhibit "T-1"	Name and signature of RDO Nacar
Exhibit "U"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Miguel Pure Foods Co. for the period August 2009
Exhibit "U-1"	Name and signature of RDO Nacar
Exhibit "V"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period January 1, 2009 to January 31, 2009
Exhibit "V-1"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period February 1, 2009 to February 28, 2009
Exhibit "V-2"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period April 1, 2009 to April 30, 2009
Exhibit "V-3"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period June 1, 2009 to June 30, 2009
Exhibit "V-4"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period August 1, 2009 to August 31, 2009
Exhibit "V-5"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period September 1, 2009 to September 30, 2009
Exhibit "V-6"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period October 1, 2009 to October 31, 2009
Exhibit "V-7"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period November 1, 2009 to November 30, 2009
Exhibit "V-8"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period December 1, 2009 to December 31, 2009
Exhibit "V-9"	Name and signature of RDO Nacar in Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period January 1, 2009 to January 31, 2009
Exhibit "W"	CTC of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by UBP for the period October 1, 2009 to December 31, 2009
Exhibit "W-1"	Name and signature of RDO Nacar
Exhibit "X"	CTC of Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) issued by SSS for the period January 1, 2009 to December 31, 2009
Exhibit "X-1"	Name and signature of RDO Nacar
Exhibit "Y"	NIC dated May 12, 2011 addressed to accused and received by accused on May 13, 2011
Exhibit "Y-1"	Name and signature of Atty. Sixto C. Dy, Jr., OIC-Chief, NID
Exhibits "Z" to "Z-1"	Reply letter to the NIC dated May 13, 2011 signed by Atty. Lentejas
Exhibit "AA" to "AA-1"	PAN dated May 12, 2011 issued on May 19, 2011 by James H. Roldan ("Mr. Roldan"), Assistant Commissioner, Enforcement Service
Exhibit "AA-2"	Name and signature of Mr. Roldan
Exhibit "AA-3"	Registry Receipt
Exhibit "AA-4"	Return Card attached to the PAN
Exhibits "BB" to "BB-1"	Details of Discrepancies attached as Annex A of the PAN
Exhibits "CC" to "CC-12," inclusive	Protest to PAN signed by Atty. Domingo
Exhibit "CC-13"	Name and signature of Atty. Domingo
Exhibits "DD" to "DD-1"	Memorandum for Deputy Commissioner Estela V. Sales dated June 13, 2011
Exhibits "EE" to "EE-1"	FLD dated June 13, 2011 issued by Mr. Roldan, Assistant Commissioner, Enforcement Service and received by accused on July 26, 2011
Exhibit "EE-2"	Name and signature of accused's representative who received the FLD
Exhibit "EE-3"	Date of receipt of FLD
Exhibits "FF" to "FF-1"	Details of Discrepancies attached as Annex A of the FLD
Exhibits "GG" to "GG-1"	Audit Result/Assessment Notice (BIR Form No. 0401) annexed to the FLD
Exhibits "HH" to "HH-11"	Protest to FLD, with attachments, dated August 18, 2011 with stamped "received" by the BIR dated August 18, 2011
Exhibit "HH-12"	Name and signature of Atty. Lentejas

Exhibit "HH-13"	Name and signature of Atty. Domingo
Exhibits "II" to "II-1"	Referral Letter of the Complaint Affidavit signed by Commissioner Kim S. Jacinto-Henares dated November 4, 2010
Exhibits "JJ" to "JJ-4"	Joint Complaint Affidavit dated November 4, 2010, excluding the annexes, executed by RO Sante, RO Simpit, Gertrudes M. Eito, and RO Saga
Exhibit "KK"	Service Record of RO Sante
Exhibit "LL"	Service Record of RO Simpit
Exhibit "MM"	Service Record of Gertrudes M. Eito
Exhibit "NN"	Service Record of RO Saga
Exhibit "OO"	CTC of Information for *CTA Crim Case No. O-251*
Exhibit "PP"	CTC of Information for *CTA Crim. Case No. O-252*
Exhibit "QQ"	CTC of DOJ Resolution dated May 6, 2011
Exhibit "RR"	CTC of DOJ Resolution on the Partial Motion for Reconsideration dated November 16, 2011
Exhibit "SS"	Memorandum for Deputy Commissioner Estela V. Sales dated May 12, 2011
Exhibit "TT"	Summary of Income received by accused for TY 2008 and 2009
Exhibit "TT-1"	Name and signature of RO who prepared the Summary of Income

The Evidence for the Defense[233]

EXHIBITS	DESCRIPTION
Exhibit "1"	Amended ITR (BIR Form No. 1701) of accused for TY 2008, including attachments
Exhibit "1-a"	Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) for TY 2008 issued by SSS
Exhibit "1-d"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philex for the period December 1, 2008 to December 31, 2008
Exhibit "2"	Amended ITR (BIR Form No. 1701) of accused for TY 2009, including attachments
Exhibit "2-a"	Portion of Note 6 (Summary of Income) found in Page 4 of the attachment to the accused's Amended ITR for TY 2009
Exhibit "3"	ITR (BIR Form No. 1701) of accused for TY 2010, including attachments
Exhibit "3-a"	Portion of Note 4 (Summary of Income) found in Page 4 of the attachment to accused's ITR for TY 2010
Exhibit "6"	DOJ Resolution dated May 6, 2011
Exhibit "9"	Certification dated October 14, 2010 issued by Ms. Rubio of UBP
Exhibit "10"	2008 Profit Sharing Distribution to the Board based on Adjusted Company Shareholdings issued by UBP
Exhibit "14"	CTC of Miscellaneous Payment Return (SSS Form R-6) dated March 18, 2009 showing that accused remitted the amount of Php3,961,713.99 to SSS
Exhibit "16"	CTC of Miscellaneous Payment Return (SSS Form R-6) dated January 22, 2010 showing that accused remitted the amount of Php7,715,518.26 to SSS
Exhibits "21"," "21-a", "21-b"	Certification dated November 22, 2010 issued by Ms. Ella, Department Manager, GAD, of SSS
Exhibit "22"	Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) issued by SSS for the period January 1, 2009 to December 31, showing that the gross compensation income of accused for TY 2009 is Php1,459,419.37
Exhibits "23," "23-a," "23-b"	Letter dated May 16, 2011 signed by Atty. Domingo addressed to BIR RDO No. 39 stating that accused is ready and willing to pay deficiency taxes in the amount of Php114,310.25 and Php496,656.97
Exhibits "24" and "24-a"	Letter dated May 17, 2011 signed by Atty. Sixto C. Dy, Jr. OIC-Chief, NID, addressed to Atty. Domingo stating that accused may voluntarily pay tax payments covering TYs 2008 and 2009
Exhibit "24-c"	Letter dated May 25, 2011 signed by RDO Nacar stating that accused may make voluntary payments for his deficiency income tax for TYs 2008 and 2009
Exhibit "25"	Payment Form (BIR Form No. 0605) showing the payment of Php114,310.25 for TY 2008 as approved by Asst. RDO Shirley A. Calapatia ("ARDO Calapatia"), and received by DBP, Quezon Avenue on May 31, 2011

[233] *Records, CTA Crim. Case No. O-251, Vol. 4, Accused's FOE*, pp. 1627-1656.

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Exhibit "26"	DBP-BIR Tax Payment Deposit Slip No. 11-47731 dated May 31, 2011 for the amount of Php114,310.25
Exhibit "28"	Payment Form (BIR Form No. 0605) showing the payment of Php496,656.97 for TY 2009 as approved by ARDO Calapatia and received by DBP, Quezon Avenue on May 31, 2011
Exhibit "29"	DBP-BIR Tax Payment Deposit Slip No. 11-47730 dated May 31, 2011 for the amount of Php496,656.97
Exhibits "31" and "31-a"	Certification dated March 20, 2012 issued by Ms. Belinda B. Ella, Department Manager, GAD of SSS
Exhibit "32"	Schedule of Allowances of accused
Exhibit "33"	Schedule of Gross Income and Taxes Withheld for TY 2009
Exhibit "34"	Schedule or Enumeration of the Mandatory Deductions being contributions to GSIS, Pag-Ibig, and Philhealth from August 2008 to December 2009
Exhibit "35"	Covering Sheet for GSIS Payments from August 2008 to December 2009
Exhibits "36" to "69"	Various official receipts issued by GSIS and summaries
Exhibit "70"	Covering Sheet for Philhealth Payments from August 2008 to December 2009
Exhibits "71" to "94"	Various official receipts issued by Philhealth and summaries
Exhibit "95"	Covering Sheet for Pag-Ibig payments from August 2008 to December 2009
Exhibits "96" to "129"	Various official receipts issue by Pag-Ibig and summaries
Exhibits "130" to "130-a"	Counter-Affidavit of accused dated December 9, 2010
Exhibit "132"	Handwritten checklist of documents submitted by accused to BIR and received by BIR on October 14, 2010
Exhibits "133" to "133-a"	Letter dated March 30, 2011 addressed to Mr. Saga
Exhibit "134"	Handwritten diagram made by the accused showing his actual *per diems* and profit share incomes and the dates when he actually received them, together with the ½ portion of the profit share which were remitted by him to SSS

The Ruling of the Court

The Court will first discuss the second legal issue, that is, whether accused could be properly charged and tried for tax evasion, despite the absence of any final tax assessment made by the BIR.

In the present case, the validity of the FLD and the FAN were never questioned by accused. Nevertheless, the absence of an assessment does not preclude the institution of a criminal charge for tax evasion, as explained by the Supreme Court in *Ungab v. Cusi*[234], to wit:

> 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 willfully 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

[234] G.R. Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

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> 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.

The rule that the filing of a criminal complaint need not be preceded by an assessment is expounded on in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et. al.*[235], where the Supreme Court held the following:

> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, 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. In contrast, the criminal charge need not go through all these. 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.

Based on the foregoing, prior issuance of a final tax assessment is not a pre-requisite to the institution of a criminal complaint against accused under *Section 255 of the 1997 NIRC.*

Having settled the second legal issue, the Court will now discuss the first legal issue. Records reveal that accused was charged with violation of *Section 255 of the 1997 NIRC* for his alleged failure to supply correct and accurate information as to his total income in his ITR for TYs 2008 and 2009. The pertinent portion of the said provision reads as follows:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – <u>Any person required under this Code or by rules and regulations promulgated thereunder to</u> pay any tax, make a return, keep

[235] G.R. No. 128315, June 29, 1999, 309 SCRA 402.

> any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. xxx[236]

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

1. Accused is the person required under the *1997 NIRC* or the rules and regulations to supply correct and accurate information;

2. Accused failed to supply correct and accurate information at the time required by law; and

3. Such failure was willful.[237]

All the above-mentioned essential elements must concur in order to secure the conviction of accused under *Section 255 of the 1997 NIRC.*

Accused is the person required to supply correct and accurate information.

Section 74 of the 1997 NIRC provides the obligation of individuals subject to tax under *Section 24* thereof to make and file a declaration of their income, *viz.:*

> SEC. 74. *Declaration of Income Tax for Individuals.* -
>
> (A) *In General.* - Except as otherwise provided in this Section, every individual subject to income tax under Sections

[236] Underscoring ours.
[237] *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.,* G.R. No. 147188, September 14, 2004, 438 SCRA 290; *Commissioner of Internal Revenue v. Japan Air Lines, Inc., et al.;* G.R. No. 60714, October 4, 1991, 202 SCRA 450.

> 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, self-employment income consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner. xxx[238]

In the present case, it was never disputed that accused is an individual subject to tax under *Section 24 of the 1997 NIRC*, and who is required to supply correct and accurate information as to his total income in his ITR. In fact, accused admitted that he is registered with BIR RDO No. 39 South Quezon City, with TIN 102-764-852; that he is the President and CEO of SSS, a member of the BOD of UBP and Philex; and, as such public official, he is receiving income from SSS, UBP, Philex, CHED and Philhealth.[239] Undoubtedly, accused recognizes his obligation to make the necessary declaration of his true income to the government. Thus, the first element clearly exists.

Accused failed to supply correct and accurate information at the time required by law.

At the onset, it is settled that there are no discrepancies in the income received by accused from CHED and Philhealth for TY 2008 and 2009.[240] Hence, the issue to be resolved is limited to his income from SSS, UBP, and Philex.

[238] Underscoring ours.
[239] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended PTO, pars. 3, 4, 7 and 8,* pp. 836-837.
[240] *Id., par. 13,* p. 837.

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The discrepancy in the income reported by accused in his ITR for TYs 2008 and 2009 surfaced when the SCF conducted an inquiry on the alleged excessive salaries and allowances of GOCCs and GFIs. Based on the report made by the SCF, the investigating team of the BIR sent access letters[241] requesting for the issuance of certifications as to the income received by accused for TYs 2008 and 2009 to SSS, and to UBP and Philex, in which SSS had investments.

Reconciling the figures reflected in the certifications from the ITR filed by accused reveals that the incomes appearing in his ITRs were significantly lower than those indicated in the certifications issued by the companies. A perusal of the records indicate that accused declared income in the total amount of Php936,891.00 in his 2008 Amended ITR, and Php13,773,539.73 in his 2009 Amended ITR, as shown below:

SOURCE	TY 2008[242]		TY 2009[243]	
SSS	Php	512,291.00	Php	1,306,219.37
UBP		408,600.00		3,134,123.56
Philex		16,000.00		9,333,196.80
TOTAL	**PHP**	**936,891.00**	**PHP**	**13,773,539.73**

On the other hand, the certifications from SSS, UBP, and Philex reflect the following:

Certification from SSS:[244]

(SSS letterhead)

GENERAL ACCOUNTING DEPARTMENT

CERTIFICATION

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241 *Records, CTA Crim. Case No. O-251, Vol. 3, Amended PTO, Exhibit "F," Access Letter to SSS,* p. 1255.

242 See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "N-2," Attachment to 2008 Amended ITR,* p. 1275; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "1," Attachment to 2008 Amended ITR,* p. 1660.

243 See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

244 *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibits "G," Certification from SSS Dated September 21, 2010,* p. 1256.

This is to certify that the following amounts were received by **MR. ROMULO L. NERI** as President & [CEO] for the period August 2008 to June 2010 amounting to [Php]4,801,960.37.

	TOTAL		Aug-Dec 2008		Jan-Dec 2009		Jan-June 2010	
Salaries	[Php]	2,300,000.00	[Php]	500,000.00	[Php]	1,200,000.00	[Php]	600,000.00
Bonuses		701,266.00		110,266.00		291,000.00		300,000.00
Representation Allow.		301,875.00		65,625.00		157,500.00		78,750.00
Other Allowances		1,464,000.00		262,500.00		756,000.00		445,500.00
Rice Grant (in kind)		34,819.37		11,900.00		22,919.37		11,023.00
TOTAL	**[PHP]**	**4,801,960.37**	**[PHP]**	**950,291.00**	**[PHP]**	**2,427,419.37**	**[PHP]**	**1,435,273.50**

Further, it is certified that the following Director's Fees were remitted by [UBP] to which Mr. Neri is the nominee from March 2009 to January 2010 amounting to [Php]11,677,232.25.

DATE	AMOUNT	
22-Jan-10	[Php]	7,715,518.26
18-Mar-09		3,961,713.99
TOTAL	**[PHP]**	**11,677,232.25**

Issued this 21st of September 2010.

(signature)
BELINDA B. ELLA
Department Manager[245]

Certification from UBP:[246]

(UBP letterhead)

MR. SIXTO C. DY, JR. October 14, 2010
OIC-Chief, [NID]
[BIR]
Rm. 211, BIR National Office Bldg.
BIR Road, Diliman
Quezon City

Dear Mr. Dy:

This has reference to your letter dated September 27, 2010 to our President & Chief Operating Officer Victor B. Valdepeñas which was referred to me for action. Please note our replies to your requested information on elected SSS-nominee Directors to [UBP], namely:

1. a.) Mr. Romulo L. Neri (August 22, 2008 to July 9, 2010)
   b.) xxx

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[245] Emphases retained.
[246] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "I" and sub-markings, Certification from UBP Dated October 14, 2010,* pp. 1259-1260; *Accused's FOE, Folder 1, Exhibit "9," Certification from UBP Dated October 14, 2010.*

xxx xxx xxx

2. The directors receive *per diems* for attendance in meetings of the board or its committees but do not receive compensation from the Bank for services rendered. There is no standard arrangement regarding compensation of directors and executive officers and there is no contract covering their employment.

3. Following amounts were paid by the Bank for services rendered by Mr. Romulo L. Neri and xxx pursuant to the Bylaws of the Bank:

YEAR	**NAME OF DIRECTOR**	***PER DIEM***	**PROFIT SHARE**
2005	xxx	P[hp] xxx	P[hp] xxx
2006	xxx	xxx	xxx
2007	xxx	xxx	xxx
2008	Mr. ROMULO L. NERI	410,400.00	7,923,427.97
2008	xxx	xxx	xxx
2009	Mr. ROMULO L. NERI	1,400,000.00	15,431,036.51
2009	xxx	xxx	xxx
2010	Mr. ROMULO L. NERI	820,000.00	n.a.
2010	xxx	xxx	xxx

4. There are no stock options held by the above-named SSS nominee directors for the last five (5) years.

We hope you find the foregoing in order. Thank you.

Very truly yours,

(signature)
MICHAELA SOPHIA E. RUBIO
First [VP] & Deputy [HR] Director[247]

Certification from Philex:[248]

(Philex letterhead)

CERTIFICATION

I, **RENATO N. MIGRIÑO,** of legal age, Filipino, the Treasurer, [CFO] and [VP] - Finance of **[Philex]** (the "Company") a corporation organized and existing under Philippine laws, with principal offices at the Philex Building, 27 Brixton Street, Pasig City, hereby state that:

1. I hereby certify that **ROMULO L. NERI**, a director of the Company until June 23, 2010, *per* the Company's records received

[247] Emphases retained.
[248] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "H" and sub-markings, Certification from Philex Dated October 4, 2010,* pp. 1257-1258.

the following amounts as *per diems* for attendance at meetings of the [BOD] and Board Committees and as director's fees of the Company:

Year	Gross Amount		Withholding Tax		Net Amount		
2008	[Php]	24,000.00	[Php]	3,600.00	[Php]	20,400.00	*Per diem* for meetings attended in 2008
		2,043,888.00		306,583.20		1,737,304.80	2008 Director's compensation paid in April 2009
	[PHP]	2,067,888.00	[PHP]	310,183.20	[PHP]	1,757,704.80	
2009	[Php]	96,000.00	[Php]	14,400.00	[Php]	81,600.00	*Per diem* for meetings attended in 2009
		4,188,107.00		628,216.00		3,559,891.00	2009 Director's compensation paid in April 2010
	[PHP]	4,284,107.00	[PHP]	642,616.00	[PHP]	3,641,491.00	
2010	[Php]	80,000.00	[Php]	12,000.00	[Php]	68,000.00	*Per diem* for meetings attended up to May 25, 2010
	[PHP]	6,431,995.00	[PHP]	964,799.20	[PHP]	5,467,195.80	

2. I further certify that **ROMULO L. NERI** received stock option grants under the Company's Stock Option Plan, the details of which are as follows:

xxx xxx xxx

3. I am executing this Certification upon the request of the [BIR] and to attest to the truth of the foregoing.

IN WITNESS WHEREOF, I have set my hand this 4th day of October 2010.

(signature)
RENATO N. MIGRIÑO[249]

Thus, according to the prosecution, there was a significant underdeclaration by accused of his income received from these companies for TYs 2008 and 2009, as shown below:

For TY 2008:[250]

	INCOME *PER* CERTIFICATIONS		**INCOME DECLARED IN ITR**		**UNDERDECLARED INCOME**	
SSS	P[hp]	950,291.00	P[hp]	512,291.00	P[hp]	438,000.00
UBP		8,333,827.97		408,600.00		7,925,227.97
Philex		24,000.00		16,000.00		8,000.00
TOTAL GROSS INCOME	**P[HP]**	**9,308,118.97**	**P[HP]**	**936,891.00**	**P[HP]**	**8,371,227.97**

249 Emphases retained.
250 *Records, CTA Crim. Case No. O-252, Information,* p. 5.

For TY 2009:[251]

	INCOME *PER* CERTIFICATIONS		INCOME DECLARED IN ITR		UNDERDECLARED INCOME	
SSS	P[hp]	2,427,419.37	P[hp]	1,306,219.37	P[hp]	1,121,200.00
UBP		20,792,750.50		3,134,123.56		17,658,626.94
Philex		8,557,458.00		10,693,196.80		(2,135,738.80)
TOTAL GROSS INCOME	**P[HP]**	**31,777,627.87**	**P[HP]**	**15,133,539.73**	**P[HP]**	**16,644,088.14**

In order to determine whether the second element exists, the Court deems it necessary to discuss the incomes received by accused from these three (3) companies in separate detail.

Income from SSS

The certification issued by the SSS showing accused's income in the amounts of Php950,291.00 in TY 2008 and Php2,427,419.37 in TY 2009, respectively, are presumed correct.[252] However, this presumption is disputable and may be proven by contrary evidence.

Records reveal that Ms. Ella of SSS issued a certification[253] presenting in tabular form the composition of the amounts of Php950,291.00 and Php2,427,419.37, the nature and treatment thereof, and whether subjected to tax or not. She also issued a certification[254] explaining in detail the bases of not subjecting certain items to tax. According to these certifications, the taxable income of accused is only Php512,291.00 in TY 2008, and Php1,306,219.37 in TY 2009. Notably, the prosecution never questioned the veracity of the contents of said certifications.

The Court also notes that the Php512,291.00 and Php1,306,219.37 amounts declared by accused in his 2008 and 2009 ITRs, respectively, are consistent with the Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) issued by SSS for TYs 2008[255] and 2009[256].

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[251] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended Information,* p. 538.
[252] *People of the Philippines v. Nieva Alberto Y De Nieva,* G.R. No. 179717, February 5, 2010, 611 SCRA 706.
[253] *Accused's FOE, Folder 1, Exhibits "21-a," and "21-b," Attachment to Certification Issued by SSS Dated November 22, 2010.*
[254] *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "31," and sub-marking, Certification Issued by SSS Dated March 20, 2012,* pp. 1694-1695.
[255] *Id., Exhibit "1-a," BIR Form No. 2316 for TY 2008,* p. 1661.
[256] *Accused's FOE, Folder 1, Exhibit "22," BIR Form No. 2316 for TY 2009; Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "X," BIR Form No. 2316 for TY 2009,* p. 1316.

Taking everything into consideration, the Court concludes that the contents of the certification dated September 22, 2010, which was the basis of the Information against accused, was sufficiently contradicted and overcome by BIR Forms No. 2316 and the two (2) certifications issued by Ms. Ella. Thus, for accused's income from the SSS, the Court is convinced that the second element is lacking.

Income from UBP

According to the prosecution, accused's income from UBP for TY 2008 is Php8,333,827.97, and Php20,792,750.50 for TY 2009, computed as follows:[257]

	TY 2008		TY 2009	
Per Diems	[Php]	410,400.00	[Php]	1,400,000.00
Profit Share		7,923,427.97		15,431,036.51
Director's Fee				3,961,713.99
TOTAL	**[PHP]**	**8,333,827.97**	**[PHP]**	**20,792,750.50**

Thus, in accused's declaration of only the amounts of Php408,600.00 and Php3,134,123.56 in his ITRs for TYs 2008 and 2009, respectively, prosecution claims that he failed to supply correct information in his ITRs, in violation of *Section 255 of the 1997 NIRC*. The Court agrees therewith, but only in part.

Accused never disputed that he received *per diems* in the amount of Php410,400.00, and profit share of Php364,587.33 in TY 2008. This notwithstanding, accused reported only Php408,600.00 in his 2008 Amended ITR. The fact that he voluntarily paid deficiency tax cannot absolve him from his obligation to declare his correct and accurate income in the ITR, which he failed to do. Clearly, the second element exists.

Further, accused did not dispute his receipt of Php1,400,000.00 *per diems* in TY 2009. Nevertheless, there is nowhere in the records that he reported the same in his 2009 Amended ITR. Thus, for this particular item of income, the second element likewise exists.

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[257] See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "QQ," DOJ Resolution Dated May 6, 2011*, p. 1387; *Accused's FOE, Folder 1, Exhibit "6," DOJ Resolution Dated May 6, 2011*, p. 14.

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With respect to his profit share, the Php7,923,427.97 amount granted by UBP based on its TY 2008 performance can be accounted for as follows:

DATE RECEIVED	WHERE REPORTED	AMOUNT	
December 19, 2008[258]	2008 Amended ITR[259]	Php	364,587.33
February 27, 2009[260]	2009 Amended ITR[261]		510,416.67
March 17, 2009[262]	2009 Amended ITR[263]		3,086,713.98
March 17, 2009[264]	Not reported[265]		3,961,713.99
TOTAL		**PHP**	**7,923,427.97**

On the other hand, the Php15,431,036.51 profit share granted by UBP based on its TY 2009 performance is accounted for in the following manner:

DATE RECEIVED	WHERE REPORTED	AMOUNT	
December 18, 2009[266]	Not reported[267]	Php	875,000.00
January 22, 2010[268]	2010 ITR[269]		6,840,518.26
January 22, 2010[270]	Not reported[271]		7,715,518.26
TOTAL		**PHP**	**15,431,036.51**

The Court shall proceed to discuss each of these items in detail.

Accused admitted that the Php875,000.00 amount he received on December 18, 2009 was not reported in the 2009 Amended ITR. He likewise disclosed that the fifteen percent (15%) withholding tax on his profit share of Php3,086,713.98 received on March 17, 2009, or

[258] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44.
[259] The Court notes that accused reported a total amount of Php408,600.00 in his 2008 Amended ITR broken down as follows: Php393,600.00 plus Php15,000.00
[260] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44; *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* p. 50.
[261] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.
[262] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44; *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* p. 50.
[263] Accused reported only the net of tax amount or Php2,623,706.89; *see Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* pp. 38-39.
[264] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44; *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* p. 50.
[265] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44.
[266] *Id., March 4, 2015,* p. 50.
[267] *Id.* at 38.
[268] *Id., April 22, 2015,* p. 6.
[269] *Id., Exhibit "3," 2010 ITR,* p. 1671.
[270] *Id., Vol. 3, TSN, February 5, 2014,* pp. 1116-1117.
[271] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, January 21, 2015,* p 38.

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Php463,007.09, was not reported. Thus, only Php2,623,706.89 was reported in the ITR. This admission made during trial is treated as a judicial admission, and absent any showing that such was made through palpable mistake, it is binding upon accused.

Section 4, Rule 128 of the Rules of Court[272] is explicit:

> Rule 129
>
> WHAT NEED NOT TO BE PROVED
>
> SEC. 4. *Judicial admissions.* — <u>An admission</u>, verbal or written, <u>made by the party in the course of the proceedings in the same case, does not require proof.</u> The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[273]

A judicial admission binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it.[274]

Thus, for these two (2) items, the second element clearly exists.

Anent the other items not reported in accused's ITR amounting to Php3,961,713.99 and Php7,715,518.26, accused claims that these pertain to one-half (1/2) of the profit share declared by UBP, which were actually remitted by him to SSS. To support his claim, accused presented in evidence the Miscellaneous Payment Return (SSS Form R-6) dated March 18, 2009[275] and January 22, 2010[276] showing receipt by SSS of Php3,961,713.99 and Php7,715,518.26, respectively. To bolster this further, accused presented a certification[277] dated November 22, 2010 issued by Ms. Ella, certifying receipt by SSS of Php3,961,713.99 and Php7,715,518.26. Thus, according to accused, while the checks were issued in his name, he did not benefit therefrom, hence, these items should not be considered as his income required to be declared in his ITR.

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[272] *1997 Rules of Court*, July 1, 1997.
[273] Underscoring ours.
[274] *Commissioner of Internal Revenue v. Manila Electric Co.*, G.R. No. 181459, June 9, 2014, 725 SCRA 384.
[275] *Accused's FOE, Folder 1, Exhibit "14," SSS Form R-6 Dated March 18, 2009.*
[276] *Id., Exhibit "16," SSS Form R-6 Dated January 22, 2010.*
[277] *Id., Exhibit "21," and sub-markings, Certification Issued by SSS Dated November 22, 2010.*

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The Court finds for accused. Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment.[278] It means cash or its equivalent.[279] It is gain derived and severed from capital, from labor, or from both combined.[280] For income tax purposes, income is an actual gain or an actual increase of wealth.[281]

In the present case, accused merely acted as an intermediary in the receipt of one-half (1/2) of the profit share. In fact, the certification[282] dated November 22, 2010 issued by SSS states that the amounts of Php3,961,713.99 and Php7,715,518.26 were recorded as part of the revenues of SSS. The fact that the checks were issued in the name of accused is of no moment. The one who benefited therefrom, and therefore required to make a declaration in the ITR, is SSS. Notably, the prosecution did not contest nor question the truthfulness of said certification. Thus, the Court is convinced that accused has no obligation to declare the profit share remitted to SSS in his ITR. Accordingly, there was no violation of *Section 255 of the 1997 NIRC* for his failure to report the same.

In so far as the other half is concerned, accused claims that he employs the cash method of accounting, hence, the amounts were reported only in the year he actually received them. On the other hand, prosecution insists that accused should have annualized his income considering that based on the AFS, he is using the accrual method of accounting.

In order for the second element to exist, accused must have failed to supply correct and accurate information as to his profit share "at the time or times required by law." Thus, it is necessary to determine the time when accused is required to make a declaration of the profit share.

Sections 2.57.4 and *2.58.1 of Revenue Regulations ("RR") No. 2-1998*[283]*, as amended,* are relevant, the pertinent portions of which state:

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[278] *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 108576, 361 Phil. 103, 120.
[279] *Id.*
[280] *Id.*
[281] *Baas, Jr. v. Court of Appeals,* G.R. No. 102967, February 10, 2000, 325 SCRA 259.
[282] *Accused's FOE, Folder 1, Exhibit "21," and sub-markings, Certification Issued by SSS Dated November 22, 2010.*
[283] Implementing *Republic Act No. 8424,* "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax

SECTION 2.57.4. *Time of Withholding.* - The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term "payable" refers to the date the obligation become due, demandable or legally enforceable.

xxx xxx xxx

SECTION 2.58.1. *Income of Recipient.* - The income upon which any creditable tax is required to be withheld at source shall be included in the return of its recipient. The excess of the withheld tax over the tax due on his return shall be refunded to him subject to the authority of the Commissioner to refund taxes under Sec. 204 of the NIRC. If the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Sec. 56 of the Code.

xxx xxx xxx[284]

Further, *Section 44 of the 1997 NIRC* provides the following:

SEC. 44. Period in which Items of Gross Income Included. - The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless under methods of accounting permitted under Section 43, any such amounts are to be properly accounted for as of a different period. xxx[285]

The pronouncement of the Supreme Court in *ING Bank N.V. v. Commissioner of Internal Revenue*[286] is instructive, *viz.*:

In *Commissioner of Internal Revenue v. Isabela Cultural Corporation,* this court explained the accrual method of accounting, as against the cash method:

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and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[284] Underscoring ours.

[285] Underscoring ours.

[286] G.R. No. 167679, July 22, 2015, 763 SCRA 359.

> Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions …
>
> Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year.
>
> The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue when the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminancy merely of time of payment.
>
> For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.
>
> The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is not as much as unknowable, within the taxable year. The amount of liability does not have to be determined exactly, it must be determined with "reasonable accuracy." Accordingly, the term "reasonable accuracy" implies something less than an exact or complete accurate amount.

> Thus, if the taxpayer is on a cash basis, the expense is deductible in the year it was paid, regardless of the year it was incurred. If he is on the accrual method, he can deduct the expense upon accrual thereof. An item that is reasonably ascertained as to amount and acknowledged to be due has "accrued"; actual payment is not essential to constitute "expense."[287]

Based on the foregoing, the determination of when to deduct an expense, and conversely, when to report income by the recipient, depends on the method of accounting employed. Under the accrual method, the payor must deduct the expense, and consequently subject the payment to withholding tax, if the all-events test is met, regardless of when actually paid. Conversely, the income recipient shall report income thereon at the time of accrual. On the other hand, under the cash method, the obligation to withhold arises only at the time of actual payment, and the income recipient shall be required to report the same only at the time of actual receipt thereof.

In the present case, there is nothing in the records that would indicate whether UBP is using the accrual or cash method of accounting. However, the Court noted that the Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307)[288] issued by UBP covering the periods December 1, 2009 to December 31, 2009 showing that the income of accused in the amount of Php4,472,130.65 can be broken down into the following:

AMOUNT		DETAILS
Php	510,416.67	Profit share received by accused on February 27, 2009[289]
	3,086,713.99	Profit share received by accused on March 17, 2009[290]
	875,000.00	Profit share received by accused on December 18, 2009[291]
PHP	**4,472,130.65**	

Further, the Creditable Tax Withheld At Source (BIR Form No. 2307)[292] issued by UBP covering the periods January 1, 2010 to January 31, 2010 shows that accused received income in the amount of Php6,840,518.27. The Court noted that this pertains to profit share declared by UBP based on the TY 2009 performance but actually

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[287] Citations omitted; Underscoring ours.
[288] *Accused's FOE, Folder 1, Exhibit "12," BIR Form No. 2307.*
[289] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, October 22, 2014,* p. 44; *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* p. 50.
[290] *Id.*
[291] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, March 4, 2015,* p. 50.
[292] *Id., Exhibit "3," BIR Form No. 2307: Attachment to 2010 ITR,* p. 1685.

received by accused on January 22, 2010[293] and reported in his 2010 ITR[294].

The fact that UBP issues Creditable Tax Withheld At Source (BIR Form No. 2307) in the year when the profit share was actually made is an indication that it employs the cash method of accounting. Consequently, accused shall be required to report the profit share in the year he actually received them.

Applying the foregoing, for TY 2009, accused should have reported Php4,472,130.65 profit share. However, records reveal that he reported only Php3,134,123.56 in his 2009 Amended ITR. Clearly, the second element also exists.

Income from Philex

The discrepancy in accused's income from Philex pertains to two (2) items, to wit: *(1) per diems* for attendance in board meetings; and *(2)* director's fee.

For the Php8,000.00 discrepancy, accused would like the Court to believe that it pertains to *per diem* covered by a check, which he refused to receive during a board meeting he walked out from.[295] Aside from this bare allegation, accused did not present any evidence, testimonial or otherwise, substantiating his claim. Notably, prosecution did not rebut said claim to prove otherwise.

The Court likewise finds it disturbing that the Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307)[296] attached to the 2008 Amended ITR presented by accused amounting to Php8,000.00 covers the period December 1, 2008 to December 31, 2008. However, the Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307)[297] attached to the same 2008 Amended ITR presented by the prosecution as evidence, also amounting to Php8,000.00, covers the period September 1, 2008 to September 30,

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[293] *Records, CTA Crim. Case No. O-251, Vol. 4, TSN, April 22, 2015,* p. 6.
[294] *Id., Exhibit "3," 2010 ITR,* p. 1671.
[295] *Id., TSN, October 8, 2014,* p. 1439.
[296] *Id., Exhibit "1-d," BIR Form No. 2307 Issued by Philex for the Period December 1, 2008 to December 31, 2008,* p. 1666.
[297] *Id., Vol. 3, Exhibit "O," BIR Form No. 2307 Issued by Philex for the Period September 1, 2008 to September 30, 2008,* p. 1278.

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2008. On the other hand, the certification[298] issued by Philex shows that accused received the total amount of Php24,000.00 as *per diems*.

While the certification issued by Philex is presumed to be issued in the regular performance of duty, the contents thereof (in so far as it pertains to accused's *per diems* in TY 2008) was sufficiently overcome by the BIR Forms No. 2307 presented in evidence. The Court takes notice that BIR Form No. 2307 is a withholding tax statement required to be issued by every payor obliged to deduct and withhold taxes, showing the income payments made and the amounts of taxes withheld therefrom. Thus, between the certification and the BIR Forms No. 2307, the Court gives credence to the latter. Since accused already reported Php16,000.00 as *per diems* in the ITR, the second element does not exist.

For TY 2009, records reveal that accused declared Php9,333,196.80 in his 2009 Amended ITR, accounted for as follows:[299]

PERIOD COVERED	GROSS INCOME	
October 2009	Php	16,000.00
September 2009		16,000.00
August 2009		16,000.00
February 2009		16,000.00
January 2009		8,000.00
July 20, 2009		10,000.00
August 1, 2009		10,000.00
March 1, 2009		5,000.00
April 1, 2009		2,059,888.00
December 1, 2009		1,751,705.87
June 1, 2009		1,137,029.40
November 2009		4,287,573.53
TOTAL	**PHP**	**9,333,196.80**

On the other hand, the prosecution alleged that accused should have declared the amount of Php8,557,458.00, *viz.*:[300]

[298] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "H" and sub-markings, Certification from Philex Dated October 4, 2010,* pp. 1257-1258.
[299] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.
[300] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "QQ," DOJ Resolution Dated May 6, 2011,* p. 1391; *Accused's FOE, Folder 1, Exhibit "6," DOJ Resolution Dated May 6, 2011,* p. 18.

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ITEM	AMOUNT	
Per Diems	Php	96,000.00
Director's Fee		2,043,888.00
Stock Options		6,417,570.00
TOTAL	**PHP**	**8,557,458.00**

With regard to *per diems*, accused claims that there was in fact overdeclaration of Php1,000.00, considering that he declared the sum of Php97,000.00[301], instead of Php96,000.00. A perusal of the records, however, indicates that accused received the following *per diems* in TY 2009, as evidenced by BIR Form No. 2307 issued by Philex:

PERIOD COVERED	AMOUNT	
January 1, 2009 to January 31, 2009[302]	Php	(8,000.00)
February 1, 2009 to February 28, 2009[303]		16,000.00
August 1, 2009 to August 31, 2009[304]		16,000.00
September 1, 2009 to September 30, 2009[305]		16,000.00
October 1, 2009 to October 31, 2009[306]		16,000.00

The Court also noted that the total amount of Php35,000.00[307] reported under Note 6 – Summary of Income actually pertains to

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[301] Computed as follows:

PERIOD COVERED	GROSS INCOME	
October 2009	Php	16,000.00
September 2009		16,000.00
August 2009		16,000.00
February 2009		16,000.00
January 2009		8,000.00
July 20, 2009		10,000.00
August 1, 2009		10,000.00
March 1, 2009		5,000.00
TOTAL	**PHP**	**97,000.00**

See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

[302] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "V," BIR Form No. 2307 Issued by Philex for the Period January 1, 2009 to January 31, 2009,* p. 1306.

[303] *Id.," BIR Form No. 2307 Issued by Philex for the Period February 1, 2009 to February 28, 2009,* p. 1307.

[304] *Id., Exhibit "V-4," BIR Form No. 2307 Issued by Philex for the Period August 1, 2009 to August 31, 2009,* p. 1310.

[305] *Id., Exhibit "V-5," BIR Form No. 2307 Issued by Philex for the Period September 1, 2009 to September 30, 2009,* p. 1311.

[306] *Id., Exhibit "V-6," BIR Form No. 2307 Issued by Philex for the Period October 1, 2009 to October 31, 2009,* p. 1312.

[307] Computed as follows:

PERIOD COVERED	GROSS INCOME	
July 20, 2009	Php	10,000.00
August 1, 2009		10,000.00

amounts received by accused from San Miguel Pure Foods Co. The Court notes that the prosecution never questioned the same when accused consistently claims that this refers to *per diems* received from Philex. Having failed to question the veracity of the claim, the prosecution is deemed to have lost its right to contest the same. Thus, for this particular item of income, the Court is also convinced that the second element does not exist.

Anent the director's fee of Php2,043,888.00, while it was never disputed that this was received by accused in 2009, hence, declared in his 2009 Amended ITR,[308] the Court finds that there is still a discrepancy in the amount of Php16,000.00 (Php2,059,888.00[309] less Php2,043,888.00), which accused failed to account for or prove the nature of. It is to be noted that an overdeclaration of income may still indicate a failure to supply correct and accurate information in the ITR. Hence, for director's fee, the Court believes that accused failed to supply the correct and accurate information in his ITR.

As regards the stock options, accused claims that he declared a total sum of Php7,176,308.80[310], which is significantly higher than the Php6,417,570.00 claimed by the prosecution as his correct income from the exercise of stock options. Records reveal that accused received income arising from the exercise of stock options, as follows:

PERIOD COVERED	AMOUNT
June 1, 2009 to June 30, 2009[311]	Php 1,137,029.40
November 1, 2009 to November 30, 2009[312]	4,287,573.53

March 1, 2009	5,000.00
TOTAL	**PHP 35,000.00**

See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

[308] *Records, CTA Crim. Case No. O-251, Vol. 2, Amended PTO, par. 11,* p. 837.

[309] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

[310] Computed as follows:

PERIOD COVERED	GROSS INCOME
December 1, 2009	Php 751,705.87
June 1, 2009	137,029.40
November 2009	287,573.53
TOTAL	**PHP 176,308.80**

See *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

[311] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "V-3," BIR Form No. 2307 Issued by Philex for the Period June 1, 2009 to June 30, 2009,* p. 1309.

December 1, 2009 to December 31, 2009[313]		1,751,705.87
TOTAL	**PHP**	**7,176,308.80**

The above is supported by Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) issued by Philex. Thus, for this item of income, the Court finds that the second element does not exist.

The failure to supply correct and accurate information was not willful.

To warrant conviction of accused, prosecution must not only prove that the act of accused, in failing to supply correct and accurate information as to his income in his ITR, was done with knowledge and voluntariness, and with intentional violation of a known legal duty. The willfulness must also be proven beyond reasonable doubt.

As to whether the prosecution proved beyond reasonable doubt that accused willfully failed to supply correct and accurate information relating to his income in the ITR, the Court finds in the negative.

The term "willful" is defined in Black's Law Dictionary as follows:

> 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...
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.

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[312] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "V-7," BIR Form No. 2307 Issued by Philex for the Period November 1, 2009 to November 30, 2009,* p. 1313.
[313] *Id., Exhibit "V-8," BIR Form No. 2307 Issued by Philex for the Period December 1, 2009 to December 31, 2009,* p. 1314.

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> 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. *Harrinton v. U.S.,* C.A.R.I., 504 F.2d 1306, 1315.[314]

Relative thereto, *Section 2, Rule 133 of the Rules on Evidence*[315] explains proof beyond reasonable doubt, *viz.:*

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

Moreover, the Supreme Court, in the case of *Monteverde v. People of the Philippines*[316], expounded on the nature of "proof beyond reasonable doubt," to wit:

> In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right. Although the evidence for the defense may be frail, criminal conviction must come, not from its weakness, but from the strength of that for the prosecution.

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[314] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599, cited in *People of the Philippines v. Bienvenido S. Dimson,* CTA *EB* Crim. Case No. 033, September 21, 2015.
[315] *Revised Rules of Court.*
[316] *Aurea R. Monteverde v. People of the Philippines,* G.R. No. 139610, August 12, 2002, 387 SCRA 196.

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Thus, it is not required for the defense to prove their innocence. What is required is for the prosecution to show, with moral certainty and through its own evidence, that accused is guilty of the criminal charge.[317] Besides, in all criminal prosecutions, the accused shall be entitled to be presumed innocent until the contrary is proven beyond reasonable doubt.

In the present case, prosecution simply failed to overcome this constitutional presumption. The prosecution heavily relied on the discrepancy found by the investigating team of the BIR on the income of accused, which amounts were derived from the documents filed by accused with the BIR *vis-à-vis* the certifications issued by the three (3) companies. Based on these information, it presumed that accused acted fraudulently in underdeclaring his income. On the other hand, accused was able to account for each of the income received from the three (3) companies, and to submit evidence to support his counter-arguments.

Time and again, the Supreme Court has held that willfulness involves the mental state of the offender.[318] The fact that accused's accountant committed mistakes in reporting his correct and true income does not imply that there is willful disregard of a lawful duty to report his accurate income. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong doing with the sole object of evading the tax.[319]

Significantly, accused relied on the work of his subordinates, particularly on his accountant, in declaring his income in the ITRs, and the withholding certificates issued by the companies showing the income received from them. The Court could not find fault on accused. It is reasonable and practical to hire an accountant who shall be responsible in accounting all matters concerning one's finances. Likewise, accused has the right to assume that the BIR Forms No. 2316 and 2307, showing his total income for TYs 2008 and 2009, are accurate and were issued in the regular performance of duties. Besides, the amounts contained in the BIR Forms are the same amounts the withholding agents are required to report to the BIR. To require accused to go over every detail contained in the certifications and re-compute his income tax liability on the premise that the

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[317] *People of the Philippines v. Efren O. Docena, et. al.*, CTA *EB* Crim. Case No. 030, January 4, 2016.
[318] *Realda v. New Age Graphics, Inc.*, G.R. No. 192190, April 25, 2012, 671 SCRA 410.
[319] *Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974, 58 SCRA 519.

certifications issued may be inaccurate is incredible, if not impractical. The Court could not discount the confidence placed upon by accused on his subordinates, absent showing any malicious or willful disregard of his duty.

Furthermore, the fact that accused voluntarily paid the deficiency taxes upon finding the discrepancies shows good faith on his part. He also endeavored to provide reconciliations of the discrepancies found by the BIR, if only to explain his side. Moreover, the Court notes that the defense presented by accused during the proceedings in court is the same defense contained in his protest to the FLD/FAN. However, the BIR still relied on the certifications issued by the three (3) companies, without even seeking explanation from the said companies as to how the amounts contained therein were derived.

Altogether, as to the last element of the offense charged, the Court finds insufficient proof. Accordingly, the Court is convinced that prosecution failed to establish the guilt of accused beyond reasonable doubt. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[320]

Accused is liable to pay income tax at a reduced amount.

On the civil aspect, *Section 7(b)(1) of Republic Act ("RA") No. 1125*[321], as amended by *RA No. 9282*[322] and *RA No. 9503*[323], provides:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> xxx xxx xxx
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:

[320] *Fernandez v. People*, G.R. No. 138503, September 28, 2000, 341 SCRA 277.
[321] An Act Creating the Court of Tax Appeals, as amended.
[322] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[323] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

> 1. ... 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 filing of such civil action separately from the criminal action will be recognized.

It is to be noted that the defense never disputed accused's receipt of the PAN, the FLD, and the FAN, nor did it question the regularity of their issuance. As such, the presumption as to the regularity and validity surrounding their issuance stands.

As earlier discussed, accused properly declared the correct amounts of income received from SSS, Philex, CHED and Philhealth. However, as regards his income from UBP, accused should have declared Php773,987.33[324] in TY 2008, and Php5,872,130.66[325] in TY 2009. Accordingly, accused is liable for deficiency income tax arising from discrepancies in income received from UBP, computed as follows:

DETAILS	TY 2008		TY 2009	
UBP Income:				
Should Be Income	Php	773,987.33	Php	5,872,130.66
Per ITR Income		408,600.00[326]		3,134,123.56[327]
Deficiency Income		365,387.33		2,738,007.10
Tax Rate		32%		32%
DEFICIENCY INCOME TAX	**PHP**	**116,923.95**	**PHP**	**876,162.27**

Records show that accused voluntarily paid deficiency taxes in the amounts of Php114,310.25[328] and Php496,656.97[329] for TYs 2008 and 2009, respectively. Accordingly, accused's deficiency income tax liability should be in the following reduced amounts:

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[324] Computed as: Php410,400.00 *per diems* plus Php364, 587.33 profit share.

[325] Computed as: Php1,400,000.00 *per diems* plus Php510,416.67, Php3,086,713.99, and Php875,000.00 profit share.

[326] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "N-3," Attachment to Amended Annual ITR of Accused for TY 2008,* p. 1276.

[327] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "Q-4", Attachment to 2009 Amended ITR,* p. 1300; *Records, CTA Crim. Case No. O-251, Vol. 4, Exhibit "2-a," Attachment to 2009 Amended ITR,* p. 1669.

[328] *Accused's FOE, Folder 2, Exhibit "25," Payment Form.*

[329] *Id., Exhibit "28," Payment Form.*

DETAILS	**TY 2008**		**TY 2009**	
Deficiency Income Tax	Php	116,923.95	Php	876,162.27
Voluntary Payment		114,310.25		496,656.97
Basic Deficiency Income Tax	Php	2,613.70	Php	379,505.30
Surcharge (25%)		653.42		94,876.33
TOTAL INCOME TAX DUE	**PHP**	**3,267.12**	**PHP**	**474,381.63**

WHEREFORE, premises considered, accused **ROMULO L. NERI** is hereby **ACQUITTED,** for failure of the prosecution to prove his guilt beyond reasonable doubt.

With regard to the civil liability, accused is **ORDERED TO PAY** deficiency income tax for TYs 2008 and 2009 in the amounts of **Php3,267.12** and **Php474,381.63**, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC.*

In addition, accused is ordered to pay:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of Php2,613.70 and Php379,505.30 computed from April 15, 2009 and April 15, 2010, respectively, until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*; and

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the aggregate amount of Php477,648.75 (Php3,267.12 plus Php474,381.63), representing the basic deficiency income tax of Php382,119.00 (Php2,613.70 plus Php379,505.30) and twenty-five percent (25%) surcharge of Php95,529.75 (Php653.42 plus Php94,876.33) and on the twenty percent (20%) deficiency interest which have accrued as aforestated in (1), computed from July 26, 2011[330] until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[330] *Records, CTA Crim. Case No. O-251, Vol. 3, Exhibit "EE-3," Date of Receipt,* p. 1339.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice