REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291**
	For: Violation of Section 255 of the NIRC of 1997, as amended.
- versus -	***Members:***
	UY, *Chairperson,* and **RINGPIS-LIBAN,** *JJ.*
REX CHUA CO HO, No. 952 Ongpin Street, Sta. Cruz, Manila, Accused.	**Promulgated:** JAN 17 2019

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DECISION

UY, J.:

Accused Rex Chua Co Ho is charged before this Court for violations of Section 255 of the NIRC of 1997, as amended, in these consolidated criminal cases, CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291. The accusatory portions in the respective Informations thereof read as follows:

CTA Criminal Case No. O-287
(Information dated May 31, 2012)

> "That on or about April 16, 2006, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and

accurate Income Tax Return, did then and there, willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2005 filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,591,797.32 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱207,945,323.17 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount he failed to supply or declare in his aforesaid tax return, to the damage and prejudice of the Government in the estimated amount of ₱169,216,519.39, inclusive of interests, penalties and surcharges.

CONTRARY TO LAW."[1]

CTA Criminal Case No. O - 288
(Information dated May 31, 2012)

"That on or about April 16, 2007, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2006 filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,895,501.46 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱414,228,805.17 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount he failed to supply or declare in his aforesaid tax return, to the damage and prejudice of the Government in the estimated amount of ₱309,541,194.28, inclusive of interests, penalties and surcharges.

[1] Information filed on July 13, 2012; Docket - Vol. 1 (CTA Crim. Case No. O-287), pp. 1 to 2.

CONTRARY TO LAW."[2]

CTA Criminal Case No. O - 289
(Information dated May 31, 2012)

"That on or about April 16, 2008, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2007 filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,819,934.40 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,240,686,746.34 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount he failed to supply or declare in his aforesaid tax return, to the damage and prejudice of the Government in the estimated amount of ₱844,971,280.49, inclusive of interests, penalties and surcharges.

CONTRARY TO LAW."[3]

CTA Criminal Case No. O - 290
(Information dated May 31, 2012)

"That on or about April 16, 2009, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate

[2] Information filed on July 13, 2012; Docket - Vol. I (CTA Crim. Case No. O-288), pp. 4 to 5.
[3] Information filed on July 13, 2012; Docket - Vol. I (CTA Crim. Case No. O-289), pp. 1 to 2.

Income Tax Return, did then and there, willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2008 filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,869,879.11 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,145,350,719.77 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount he failed to supply or declare in his aforesaid tax return, to the damage and prejudice of the Government in the estimated amount of ₱706,744,239.34, inclusive of interests, penalties and surcharges.

CONTRARY TO LAW."[4]

<u>CTA Criminal Case No. O - 291</u>
<u>(Information dated May 31, 2012)</u>

"That on or about April 16, 2010, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2009 filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,217,212.01 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,932,757,566.50 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount he failed to supply or declare in his aforesaid tax return, to the damage and prejudice of the Government in the estimated amount of ₱1,067,713,631.10, inclusive of interests, penalties and surcharges.

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[4] Information filed on July 13, 2012; Docket - Vol. 1 (CTA Crim. Case No. O-290), pp. 1 to 2.

CONTRARY TO LAW."[5]

Upon the filing of the respective Informations in the instant consolidated criminal cases, individual motions for consolidation were filed in the instant consolidated cases, as well as separate determinations on the existence of probable cause were made by the Court for purposes of issuing warrants of arrest against accused, to wit:

CTA Crim. Case No. O-287

On August 1, 2012, the prosecution filed a *Motion for Consolidation,*[6] praying for the consolidation of CTA Crim. Case No. O-287 with CTA Crim. Case Nos. O-288, O-289, O-290, and O-291.

In the Resolution dated August 6, 2012[7], the prosecution was ordered to submit the original or certified true copies of the Review Resolution dated May 31, 2012, and the recommendation for criminal prosecution of accused, issued by the CIR, and to present additional evidence, if any.

On August 14, 2012, accused voluntarily surrendered and submitted himself to the jurisdiction of the Court and posted the required bail bond for his provisional liberty in CTA. Crim. Case No. O-287.[8]

Meanwhile, the prosecution filed its *Manifestation and Compliance*[9] on August 15, 2012, which was noted in the Resolution dated August 29, 2012.[10]

CTA Crim. Case No. O-288

In CTA Crim. Case No. O-288, the Court found probable cause for the issuance of a warrant of arrest against the accused on July 27, 2012,[11] and issued a Warrant of Arrest on August 6, 2012.[12]

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[5] Information filed on July 13, 2012; Docket - Vol. 1 (CTA Crim. Case No. O-291), pp. 4 to 5.
[6] Docket – Vol. 3 (CTA Crim. Case No. O-287), p. 1459.
[7] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1461 to 1463.
[8] Docket – Vol. 3 (CTA Crim. Case No. O-287), p. 1465.
[9] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1473 to 1488.
[10] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1490 to 1493.
[11] Docket – Vol. 3 (CTA Crim. Case No. O-288), p. 1464.
[12] Docket – Vol. 3 (CTA Crim. Case No. O-288), p. 1474.

On August 1, 2012, the prosecution filed a *Motion for Consolidation,*[13] praying for the consolidation of CTA Crim. Case No. O-288 with CTA Crim. Case Nos. O-287, O-289, O-290, and O-291.

On August 14, 2012, accused voluntarily appeared before the Court and posted the required bail bond for his provisional liberty in CTA. Crim. Case No. O-288.[14]

In the Resolution[15] dated August 15, 2012, the First Division of this Court granted the Motion for Consolidation filed by the prosecution, pursuant to Section 22, Rule 119 of the Revised Rules of Criminal Procedure, as amended. Thereafter, CTA Crim. Case No. O-288 was consolidated with CTA Crim. Case No. O-287, the case bearing the lowest docket number.

CTA Crim. Case No. O-289

In CTA Crim. Case No. O-289, the Court likewise found probable cause for the issuance of a warrant of arrest against the accused on July 27, 2012,[16] and issued a Warrant of Arrest on August 6, 2012.[17]

On August 1, 2012, the prosecution filed a *Motion for Consolidation,*[18] praying for the consolidation of CTA Crim. Case No. O-289 with CTA Crim. Case Nos. O-287, O-288, O-290, and O-291.

On August 14, 2012, accused voluntarily appeared before the Court and posted the required bail bond for his provisional liberty in CTA. Crim. Case No. O-289.[19]

In the Resolution[20] dated August 15, 2012, the First Division of this Court granted the Motion for Consolidation filed by the prosecution, pursuant to Section 22, Rule 119 of the Revised Rules of Criminal Procedure, as amended. Thereafter, CTA Crim. Case No. O-289 was consolidated with CTA Crim. Case No. O-287, the case bearing the lowest docket number.

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[13] Docket – Vol. 3 (CTA Crim. Case No. O-288), p. 1465.
[14] Docket – Vol. 3 (CTA Crim. Case No. O-288), pp. 1472 to 1473.
[15] Docket – Vol. 3 (CTA Crim. Case No. O-288), pp. 1472 to 1473.
[16] Docket – Vol. 3 (CTA Crim. Case No. O-289), p. 1457.
[17] Docket – Vol. 3 (CTA Crim. Case No. O-289), p. 1467.
[18] Docket – Vol. 3 (CTA Crim. Case No. O-289), p. 1458.
[19] Docket – Vol. 3 (CTA Crim. Case No. O-289), pp. 1465 to 1466.
[20] Docket – Vol. 3 (CTA Crim. Case No. O-289), pp. 1465 to 1466.

CTA Crim. Case No. O-290

On August 1, 2012, the prosecution filed a *Motion for Consolidation,*[21] praying for the consolidation of CTA Crim. Case No. O-290 with CTA Crim. Case Nos. O-287, O-288, O-289, and O-291.

On August 14, 2012, accused voluntarily surrendered and submitted himself to the jurisdiction of the Court and posted the required bail bond for his provisional liberty in CTA. Crim. Case No. O-290.[22]

CTA Crim. Case No. O-291

In CTA Crim. Case No. O-291, the Court found probable cause for the issuance of a warrant of arrest against the accused on July 25, 2012,[23] and issued a Warrant of Arrest on July 26, 2012.[24]

On August 1, 2012, the prosecution filed a *Motion for Consolidation,*[25] praying for the consolidation of CTA Crim. Case No. O-291 with CTA Crim. Case Nos. O-287, O-288, O-289, and O-290.

In the Resolution[26] dated August 3, 2012, the Second Division of this Court granted the Motion for Consolidation filed by the prosecution, pursuant to Section 22, Rule 119 of the Revised Rules of Criminal Procedure, as amended. Thereafter, CTA Crim. Case No. O-291 was consolidated with CTA Crim. Case No. O-287, the case bearing the lowest docket number.

On August 14, 2012, accused voluntarily appeared before the Court and posted the required bail bond for his provisional liberty in CTA. Crim. Case No. O-291.[27]

Consolidated Cases

In the Resolution dated August 29, 2012,[28] this Court (Third Division) conformed to the consolidation of CTA Crim. Case Nos. O-288, O-289, and O-291, with CTA. Crim. Case No. O-287. Moreover, the *Motion for Consolidation* filed on August 1, 2012 was granted, and

[21] Docket – Vol. 3 (CTA Crim. Case No. O-290), p. 1461.
[22] Docket – Vol. 3 (CTA Crim. Case No. O-290), p. 1463.
[23] Docket – Vol. 3 (CTA Crim. Case No. O-291), p. 1463.
[24] Docket – Vol. 3 (CTA Crim. Case No. O-291), p. 1464.
[25] Docket – Vol. 3 (CTA Crim. Case No. O-291), p. 1465.
[26] Docket – Vol. 3 (CTA Crim. Case No. O-291), p. 1466.
[27] Docket – Vol. 3 (CTA Crim. Case No. O-291), p. 1472.
[28] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1490 to 1493.

CTA. Crim. Case No. O-290 was consolidated with CTA Crim. Case Nos. O-287, O-288, O-289, and O-291.

Upon arraignment, accused Rex Chua Co Ho, assisted by counsel *de parte*, Attys. Juan Victor Valdez and Edlyn Margaret Santiago, entered a plea of "Not Guilty" to all charges, and admitted that he is the same Rex Chua Co Ho being charged in the Information in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291.[29]

The prosecution filed its *Preliminary Conference Brief*[30] on September 14, 2012, while accused filed his *Preliminary Conference Brief*[31] on September 17, 2012. Thereafter, a Preliminary Conference was held on September 18, 2012.[32]

On September 18, 2012, the accused filed an *Omnibus Motion: 1) To Reset Preliminary Hearing and Pre-Trial Conference, and 2) Motion for Leave of Court to Refer Documentary Evidence to an Independent Certified Public Accountant,*[33] to which plaintiff filed its *Comment/Opposition to Accused's Omnibus Motion to Reset Preliminary Hearing and Pre-Trial Conference and Motion for Leave of Court to Refer Documentary Evidence to an Independent Certified Public Accountant*[34] on September 21, 2012. In the Resolution[35] dated October 5, 2012, the subject Omnibus Motion was denied.

Accused filed his *Motion for Reconsideration (of the Resolution dated 05 October 2012)*[36] on October 23, 2012, while plaintiff filed its *Comment/Opposition to Accused's Motion for Reconsideration (of the Resolution dated 05 October 2012)*[37] on November 23, 2012.

On November 16, 2012, accused filed an *Amended Preliminary Conference Brief,*[38] which was noted by the Court in the Resolution[39] dated January 17, 2013.

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[29] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1498 to 1500; Docket – Vol. 3 (CTA Crim. Case No. O-288), pp. 1485 to 1486; Docket – Vol. 3 (CTA Crim. Case No. O-289), pp. 1475 to 1476; Docket – Vol. 3 (CTA Crim. Case No. O-290), pp. 1468 to 1469; and Docket – Vol. 3 (CTA Crim. Case No. O-291), pp. 1477 to 1478.
[30] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1501 to 1524.
[31] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1525 to 1531.
[32] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1541 to 1544.
[33] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1547 to 1551.
[34] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1566 to 1577.
[35] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp.1619 to 1625.
[36] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1736 to 1751.
[37] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1840 to 1851.
[38] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1812 to 1818.
[39] Docket – Vol. 3 (CTA Crim. Case No. O-287), pp. 1867 to 1871.

In the Resolution[40] dated January 17, 2013, the Court resolved in favor of the accused the *Motion for Reconsideration (of the Resolution dated 05 October 2012)* and ordered the accused to file a Motion pursuant to Section 1, Rule 13 of the 2005 Revised Rules of the CTA, as amended, attaching the proposed Independent CPA's Judicial Affidavit attesting to his integrity and independence, and his Curriculum Vitae to prove his competence.

Thereafter, accused filed the following: a) *Compliance with Omnibus Motion 1. For Appointment of Independent Certified Public Accountant 2. For Extension of Time*[41] on January 28, 2013; b) *Compliance,*[42] attaching therewith the *Judicial Affidavit of Mr. Enrico T. Pizarro,*[43] in support of his Motion for Appointment of Pizarro as Independent Certified Public Accountant, on February 7, 2013; and c) *Manifestation*[44] on February 28, 2013. In the Resolution[45] dated March 20, 2013, the *Compliance with Omnibus Motion* was granted, while the *Compliance* and *Manifestation* were noted.

On April 24, 2013, Enrico T. Pizarro took his *Oath of Commission*[46] as an independent CTA and was ordered to submit his ICPA Report within a non-extendible period of forty (40) days.[47]

In compliance thereto, Enrico T Pizarro filed the ICPA Report[48] on June 3, 2013, to which the plaintiff filed its *Comment to the Report of the Independent Certified Public Accountant*[49] on July 2, 2013.

Thereafter, plaintiff filed its *Pre Trial Brief*[50] on July 2, 2013, which was noted in the Resolution[51] dated August 7, 2013. On September 25, 2013, Pizarro filed a *Supplementary Report on the Results of the Agreed-Upon Procedures on Tax Assessment Case For Taxable Year 2005 CTA Crim. Case No. O-287.*[52] In addition, accused filed an *Amended Preliminary Conference Brief*[53] on October 4, 2013.

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[40] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1867 to 1871.
[41] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1911 to 1915.
[42] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1873 to 1877.
[43] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1878 to 1883.
[44] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1885 to 1889.
[45] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1921 to 1924.
[46] Docket – Vol. 4 (CTA Crim. Case No. O-287), p. 1930.
[47] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp.1943 to 1945.
[48] Exhibits "A-2182", "A-2183", "A-2184", "A-2185", and "A-2186".
[49] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1960 to 1966.
[50] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 1967 to 2003.
[51] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 2071 to 2074.
[52] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 2125 to 2332.
[53] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 2335 to 2345.

In the Resolution[54] dated October 14, 2013, the prosecution was granted fifteen (15) days from October 9, 2013, within which to submit the parties' Joint Stipulation of Facts and Issues. However, accused filed a *Motion for Extension of Time (To File Joint Stipulation of Facts)*[55] on October 24, 2013, which was granted by this Court in the Resolution[56] dated November 21, 2013.

On November 11, 2013, accused filed another *Motion for Extension of Time (To File Joint Stipulation of Facts),*[57] while plaintiff filed its *Amended Pre-Trial Brief*[58] on December 9, 2013. Thereafter, the parties filed their *Joint Stipulation of Facts and Issues*[59] on January 24, 2014.

As stated in the *Pre-Trial Order* dated May 26, 2014,[60] the parties stipulated on the following facts and issues, to wit:

> "**A. <u>FACTS:</u>**
>
> 1. The instant consolidated cases filed by the State against the Accused are within the jurisdiction of this Honorable Court of Tax Appeals.
>
> 2. Identity of Accused Rex Chua Co Ho ("Accused Co Ho") as the same person being charged with five (5) Informations subject of the instant consolidated case.
>
> 3. Accused Rex Chua Co Ho ("Accused Co Ho") is a Filipino citizen with Taxpayer Identification Number (TIN) 901-440-301-000.
>
> 4. Accused Co Ho is doing business as sole proprietor of Rex Gift Shoppe located at No. 952 Ongpin Street, St. Cruz, Manila.
>
> 5. Accused Co Ho admits that, during taxable years 2005 to 2009, he sold gold and silver to the *Bangko Sentral ng Pilipinas* under its Mint and Refinery Operations Department.

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[54] Docket – Vol. 4 (CTA Crim. Case No. O-287), pp. 2364 to 2366.
[55] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2409 to 2415.
[56] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2486 to 2489.
[57] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2491 to 2497.
[58] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2504 to 2537.
[59] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2541 to 2551.
[60] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.

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6. Accused Co Ho filed his Income Tax Return (ITR) for the year 2005 at BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Five Hundred Ninety One Thousand Seven Hundred Ninety Seven and 32/100 Pesos (Php1,591,797.32).

7. Accused Co Ho filed his Income Tax Return (ITR) for the year 2006 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Ninety Five Thousand Five Hundred One and 46/100 Pesos (Php1,895,501.46).

8. Accused Co Ho filed his Income Tax Return (ITR) for the year 2007 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Nineteen Thousand Nine Hundred Thirty Four and 40/100 Pesos (Php1,819,934.40).

9. Accused Co Ho filed his Income Tax Return (ITR) for the year 2008 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Sixty Nine Thousand Eight Hundred Seventy Nine and 11/100 Pesos (Php1,869,879.11).

10. Accused Co Ho filed his Income Tax Return (ITR) for the year 2009 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Two Hundred Seventeen Thousand Two Hundred Twelve and 1/100 Pesos (Php1,217,212.01).

11. The amounts of Two Hundred Seven Million Nine Hundred Forty Five Thousand Three Hundred Twenty Three and 17/100 Pesos (Php207,945,323.17), Four Hundred Fourteen Million Two Hundred Twenty Eight Thousand Eight Hundred Five and 17/100 Pesos (Php414,228,805.17), One Billion Two Hundred Forty Million Six Hundred Eighty Six Thousand Seven Hundred Forty Six and 34/100 Pesos (Php1,240,686,746.34), One Billion One Hundred Forty Five Million Three Hundred Fifty Thousand Seven Hundred Nineteen and 77/100 Pesos (Php1,145,350,719.77), and One Billion Nine Hundred Thirty Two Million Seven Hundred Fifty Seven

Thousand Five Hundred Sixty Six and 50/100 Pesos (Php1,932,757,566.50) for the years 2005, 2006, 2007, 2008, and 2009, respectively, reflected in the Independent Certified Public Accountant's (ICPA) report are the same figures in the Certified List of Gold Transactions prepared by the *Bangko Sentral ng Pilipinas (BSP)* marked as Exhibits "P-3" to "P-3-e" for the prosecution.

12. The Bureau of Internal Revenue (BIR), through Revenue Officers Marites Arias, Nilda Se, and Josephine Madera conducted an investigation on Accused Co Ho.

13. The genuineness, due execution, and admissibility of Letters of Delivery and Sales from BSP marked as **Exhibits "P-4" to "P-1380"** for the prosecution and marked as **Exhibits "A-1" to "A-1378"** for the defense.

14. Accused Co Ho represents and warrants that he is the owner of the gold and silver sold to BSP as shown by the warranty in Paragraph 2 of the Letters of Delivery and Sales from BSP marked as **Exhibits "P-4-a" to "P-1380-a"** for the prosecution.

15. The name and signature of Accused Co Ho in the Letters of Delivery and Sale from BSP marked as **Exhibits "P-4-b" to "P-1380-b"** for the prosecution and marked as **Exhibits "A-1D" to "A-1378D"** for the defense.

16. The genuineness, due execution, and admissibility of the BSP certification of the total annual gold sales of Accused Co Ho for the years 2005 to 2009 in the amounts of Two Hundred Seven Million Nine Hundred Forty Five Thousand Three Hundred Twenty Three and 17/100 Pesos (Php207,945,323.17), Four Hundred Fourteen Million Two Hundred Twenty Eight Thousand Eight Hundred Five and 17/100 Pesos (Php414,228,805.17), One Billion Two Hundred Forty Million Six Hundred Eighty Six Thousand Seven Hundred Forty Six and 34/100 Pesos (Php1,240,686,746.34), One Billion One Hundred Forty Five Million Three Hundred Fifty Thousand Seven Hundred Nineteen and 77/100 Pesos (Php1,145,350,719.77), and One Billion Nine Hundred Thirty Two Million Seven Hundred Fifty Seven Thousand Five Hundred Sixty Six and 50/100 Pesos (Php1,932,757,566.50) for the years 2005, 2006, 2007, 2008, and 2009, respectively, issued by BSP Deputy

Director Simeona G. Llanes and supported with a Summary of Gold Sales to BSP by Mr. Rex Co Ho, which was prepared by the BSP's Financial Services and Data Management Group and marked as **Exhibits "A-2162" to "A-2162-E"** for the defense.

17. The genuineness, due execution, and admissibility of Accused Co Ho's Income Tax Returns (ITR's) for taxable years 2005, 2006, 2007, 2008, and 2009 marked as Exhibits "P-1386," "P-1388" to " P-1388-a," " P-1390" to "P-1390-C," "P-1391," respectively, for the prosecution.

B. ISSUES

1. FACTUAL ISSUES

a. Whether the Bureau of Internal Revenue correctly computed accused's net income derived from gold transactions with the *Bangko Sentral ng Pilipinas.*

b. Whether accused has tax deficiencies.

2. LEGAL ISSUE

Whether accused is guilty as charged."

To establish the culpability of accused in these consolidated cases, the prosecution presented four (4) witnesses, namely: (1) Josephine D. Madera; (2) Nilda T. Se; (3) Marites P. Arias; and (4) Marites F. Encina. They testified as follows:

1. **Josephine D. Madera** testified that she is a Certified Public Accountant (CPA), and is currently holding the position of Revenue Officer IV, presently assigned at the National Investigation Division of the BIR National Office. As a Revenue Officer, she is tasked to conduct audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; to submit corresponding reports on audit or investigation; to recommend the prosecution for criminal violations of the provisions of the NIRC of 1997; and to perform such duties and functions that may be assigned to her by her superiors.

On December 10, 2010, the case of accused Rex Chua Co Ho was assigned to her group for investigation. She is the group supervisor, while Revenue Officers Nilda T. Se and Marites Arias are her members. The assignment was made via a Memorandum issued by their Chief, Atty. Sixto C. Dy, with the directive to conduct a preliminary investigation on the alleged "schemes of tax evasion" being perpetrated by the accused.

Among the documents attached in the Memorandum issued to them is a letter from the *Bangko Sentral ng Pilipinas (BSP)* Deputy Governor – Armando L. Suratos to the Commissioner of Internal Revenue, Atty. Kim Jacinto-Henares, dated November 30, 2011, with attached certified list of individuals who had refined gold and silver sales to the BSP between 2005 and 2009.

The certified list included accused Rex Chua Co Ho as one of the individuals who had refined gold and/or silver sales to the BSP for the years 2005 to 2009, which transactions earned him net payments from the BSP amounting to hundreds of millions of pesos.

In their investigation, they "profiled" accused Rex Chua Co Ho, to determine his address and whether he was a registered taxpayer or not, and learn about the summary of his tax payments, if any. Second, they conducted "third party verification." Third, they consolidated all the data, information and documents that they gathered pertaining to Rex Chua Co Ho, evaluated the said information, and came up with their findings and recommendations.

They accessed the centralized database of their Office – the BIR Integrated Tax System (ITS), and found out that accused was registered in 1997 with RDO No. 31 of Sta. Cruz, Manila, as the sole proprietor of Rex Gift Shoppe, located at No. 952 Ongpin St., Sta. Cruz, Manila, under the primary industry type of "other retail sale." He was given Tax Identification Number (TIN) 901-440-331-000.

Thereafter, an access letter was sent to the BSP to enable them to obtain other supporting documents, such as the corresponding *Letters of Delivery and Sale* and *Letters of Authorization* relative to having a seller representative.

In response, the BSP supplied the requested Letter of Authorization and Letters of Delivery and Sale, signed and executed by the Accused, which further confirmed his gold and silver sale transactions with the BSP for the years 2005 to 2009.

They also served the Access Letter to BIR RDO No. 31 – Sta. Cruz, Manila, to obtain certified true copies of tax returns filed by the accused.

After evaluation, their group found that a comparison of the net payment that the accused received from the BSP per the latter's summary of his gold sales, and the gross income he declared in his ITR, disclosed that the accused grossly underdeclared his income for taxable years 2005, 2006, 2007, 2008, 2009, and is indicative of fraud or tax evasion.

The underdeclaration was substantial, which means it exceeded 30% of the income he declared per return for each of the taxable years covered. He also committed the same kind of underdeclaration consistently for five (5) consecutive taxable years, covered by their investigation. In fact, accused never updated his tax registration details to include "gold trading" to his "registered activities" or as additional line of industry, causing him to freely declare and acknowledge just the income being derived from his gift shop.

Thereafter, their Division made the recommendation to the CIR for issuance of a Letter of Authority (LOA) against Rex Chua Co Ho. The CIR issued LOA No. LOA-211-2011-00000135 dated 10 May 2011.

The subject LOA was issued against Rex Chua Co Ho with address at No. 952 Ongpin St., Sta. Cruz, Manila. The LOA authorized Revenue Officers Marites Arias, Nilda T. Se and Josephine D. Madera to examine the books of accounts and other accounting records of Rex Chua Co Ho. Their group was authorized to undertake an examination of the books of accounts and accounting records of Rex Chua Co Ho for all internal revenue taxes covering the period January 1, 2005 to December 31, 2010.

After finding violations committed by the accused during their preliminary investigation, they computed his tax liabilities and informed him of their findings through a Notice to Taxpayer. They also recommended the filing of criminal charges against the accused and prepared the Complaint-Affidavit against him for filing before the Department of Justice (DOJ).[61]

On cross-examination, she testified that for failure of the accused to declare his income from his sales directly in his income tax returns, they did not use the best obtainable evidence method.[62]

On re-direct examination, she testified that they did not consider any acquisition costs or costs of sale in their computation.

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[61] Amended Judicial Affidavit of Josephine D. Madera dated May 29, 2014, Exhibit "P-1409," Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2758 to 2775.
[62] TSN dated July 2, 2014, pp. 20 to 30.

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This is because the accused intentionally did not declare his income from his gold trade transactions, and it is logical that they not allow any cost of expenses pertaining to that particular gold trading.

The opportune time for the accused to raise the issue of cost of sales during their investigation was when he was given notice by their group. Under the substantiation requirements of the Tax Code, no deductions of costs shall be allowed from the gross income unless the taxpayer supported its sufficient evidence like official receipts and invoices, etc.

Accused responded to their notices by presenting a small notebook showing the summary of his gold and silver sale transactions. The contents of the said notebook was not considered because the Tax Code is very specific on the substantiation requirements that the taxpayer, except those earning compensation income, should give and maintain records required by the Tax Code, for it to be examined and that it must be substantiated with proper documents. The costs should always be substantiated by proper documents and compliant with the requirements stated in the Tax Code. The costs must be supported by official receipts, invoices, and proof of payment for the acquisition.[63]

On re-cross examination, she testified that the verification made by the BIR with regard to the acquisition of the gold and silver sales, was effected by way of requiring the accused to submit the necessary documents stated in their checklist of requirements, attached to the LOA served to him.

The taxpayer is accorded time to comply with the requirements that they are expected to submit and that is reasonable enough. For several notices, the accused failed to comply or submit the requirements being asked from him.[64]

2. **Nilda T. Se** testified that she is currently holding the position of Revenue Officer III, assigned at the National Investigation Division (NID) of the BIR National Office. As a Revenue Officer, her functions include auditing or investigating books of accounts and other accounting records of taxpayers for internal revenue tax purposes; submitting corresponding reports on their audit or investigation; recommending the prosecution for criminal violation of the NIRC; and to perform duties and functions that may be assigned to her by her superiors from time to time. She is a CPA, who was part of the three-member team that investigated accused Rex Chua Co Ho. She was grouped with Revenue Officers Marites Arias and Group Supervisor

[63] TSN dated July 2, 2014, pp. 31 to 34.
[64] TSN dated July 2, 2014, pp. 34 to 36.

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Josephine D. Madera.

The Chief of Office of the NID, Atty. Sixto Dy, issued a Memorandum on December 10, 2010, directing their Group to conduct a preliminary investigation on suspected "tax evasion scheme" being committed by accused Rex Chua Co Ho. They initially referred to the documents attached to the Memorandum, which included a letter from the BSP Deputy Governor Armando L. Suratos, addressed to the CIR, with annexed certified list of individuals with BSP gold transactions from 2005 to 2009.

The subject list disclosed that accused Rex Chua Co Ho had refined gold and/or silver sales to the BSP for the years 2005 to 2009 and the corresponding net payments he received per year from the said sales amounting to hundreds of millions of pesos.

They began "profiling" the accused and learned about his tax registration with RDO No. 31 of Sta. Cruz, Manila, in 1997 as sole proprietor of Rex Gift Shoppe located at No. 952 Ongpin St., Sta. Cruz, Manila, under the primary industry type of "other retail sale," and that he was assigned TIN No. 901-440-331-000. Thereafter, they conducted "third party verification," which in this particular case, entailed issuances of access letters to the BSP and to RDO No. 31 of Sta. Cruz, requesting for certified true copies of the Letters of Delivery and Sale, and Letters of Authorization executed by the accused relative to his gold and silver sale transactions with the BSP for 2005 to 2009.

RDO No. 31 – Sta. Cruz, Manila, furnished their Group with certified true copies of the ITRs filed by accused Rex Chua Co Ho for taxable years 2005, 2007, 2008, and 2009, including its attachments. For taxable year 2006, RDO No. 31 – Sta. Cruz, Manila provided a certified true copy of the ITS printout of his tax return. They proceeded to evaluate and analyze the documents, along with other data and information they gathered, vis-à-vis relevant provisions of tax laws and BIR Regulations.

They found out that accused Rex Chua Co Ho's tax registration was not reflective at all of his venture into "gold trading." While they were able to confirm from the certified list of BSP gold transactions released by the BSP and the Letters of Delivery and Sale that he sold gold and silver to the BSP for the period covered, earning him net payments amounting to hundreds of millions of pesos, this was never reported in the ITRs he had filed for the subject taxable years. In fact, his declaration pertained solely to the taxable sales, receipts, or income pertaining to the Rex Gift Shoppe.

After evaluation, they found that there was a gross underdeclaration of the taxable sales or income in the ITRs filed by the accused for taxable years 2005, 2006, 2007, 2008, and 2009, and that the underdeclaration and/or non-reporting of complete earnings in all five (5) annual ITRs were attended with fraud and deemed fraudulent returns. This is because the underdeclaration was substantial in that they exceeded 30% of the sales/receipts declared per return, which under Section 248 of the NIRC is *prima facie* evidence of a fraudulent return.

The percentage of underdeclaration per taxable year is as follows:

2005	13,063.57%
2006	21,853.25%
2007	68,172.06%
2008	61,252.66%
2009	158,785.61%

Moreover, despite yielding much higher gross sales in "gold trading" compared to the primary industry he registered, which was "retail sale" for the gift shop, accused never updated his tax registration details to reflect "gold trading" in the list of his registered activities, or as an additional line of industry.

On the basis of their initial finding of fraud, their Division recommended to the CIR, the issuance of an LOA against Rex Chua Co Ho. The CIR then issued LOA No. LOA-211-2011-00000135 dated May 10, 2011. They also recommended the filing of criminal charges against accused with the DOJ and executed a Complaint-Affidavit in connection with the case.

They also filed a Joint Reply Affidavit in the said case, to address the assertions and/or defenses raised by the accused, with regard to their supposed failure to consider "deductible expenses" in their computation of his tax deficiencies. In addition, they replied to accused's claim that he mistook the zero-rating of his gold sales in terms of the VAT to mean tax exemption on the income tax as well.

As to the matter of deductible expenses, their position is that the accused should have first reported and accounted for all of his sales/receipts/revenues from his gold trading, and thereafter, claim deductible expenses, if any, upon proper substantiation. In this case, the accused neither reported the income nor presented any official receipt or records for any deductible expense.

As regards the failure to declare his income by mistake, considering that the accused, as per his tax registration, has been in the retail business since 1997, it is not convincing that accused mistook the zero rating in VAT to mean exemption from income tax as well, so as far as the BIR is concerned, the underdeclaration was willful and calculated.

After assessment, they informed accused Rex Chua Co Ho of their findings of tax deficiencies by serving him a Notice to Taxpayer. Accused, together with his representative and/or attorney, appeared on several occasions, but failed to submit any documents that would support any changes in the computation of the tax deficiency of the taxpayer.

Since the accused failed to submit documents, they recommended the issuance of a PAN against the accused. The PAN dated September 5, 2012 was issued to the accused, where the total income tax due for each taxable year was computed using the amounts representing total net payments received by the accused from his gold sales to the BSP per year, in addition to the total sales declared by the accused in the pertinent ITRs. Then, allowable deductions were subtracted from net taxable income, as well as tax already paid, to come up with the tax due. After getting the basic tax due, they added a 50% surcharge and 20% interest for each taxable year to come up with the total income tax due.

They caused the service of the PAN to the accused and they received a reply to the PAN dated September 21, 2012. Finding no merit to the issues raised by the accused in his reply to the PAN, they recommended for the issuance of the FAN or FLD. Thus, the FLD dated October 30, 2013 was issued to the accused, containing the results of their investigation covering the internal revenue taxes liabilities of the accused for taxable years 2005 to 2009.

The total deficiency income taxes of the accused is Three Billion Nine Hundred Sixteen Million Three Hundred Ninety Two Thousand Five Hundred Seventy One and 82/100 Pesos (₱3,916,392,571.82) for taxable years 2005 to 2009, the details of which are as follows:

2005	₱ 203,837,139.93
2006	378,309,817.50
2007	1,050,383,947.22
2008	896,403,261.99
2009	1,387,458,405.18

Thereafter, they received a request for reinvestigation dated January 2, 2014 from the accused, through his lawyers.[65]

On cross-examination, she testified that the accused did not include in his ITR any sale or income he earned from his gold transactions. The cost of sales were also not included in her computation of accused's tax liabilities because the accused failed to submit any documents to support or substantiate his claim of expenses. Under the NIRC of 1997, as amended, the taxpayer should submit official receipts and other adequate records, and evidence to support his claim of expenses. Finally, she stated that they do not accept the audited financial statements without proper substantiation.[66]

3. **Marites P. Arias** testified that she is a CPA, who holds the position of Revenue Officer II at the National Investigation Division of the BIR National Office. As a Revenue Officer, she conducts audits or investigations of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; submit corresponding reports on our audit or investigation; recommend the prosecution of criminal violations of the provisions of the NIRC of 1997; and perform such duties and functions that may be assigned to her by her superiors.

Accused Rex Chua Co Ho became the subject of an investigation conducted by her group, together with Revenue Officers Nilda T. Se and Supervisor Josephine Madera, due to the alleged tax fraud and tax evasion committed by the accused. They conducted their preliminary investigation due to the directive of the Chief of the NID to conduct a formal tax fraud investigation, by virtue of LOA No. LOA-211-2011-00000135 dated May 10, 2011.

Their group was able to come up with an initial finding that the ITRs filed by accused for taxable years 2005 to 2009 were fraudulent, because of his failure to report in the said ITRs his gold sales to the BSP for the subject taxable years. Their finding was based on the substantial underdeclaration of income in the returns filed by the accused for 2005, 2006, 2007, 2008, and 2009 in amounts equivalent to more than 30% of declared income. This constitutes *prima facie* evidence of fraudulent return under Section 248(b) of the NIRC. They also considered that this went on consistently for five consecutive taxable years, and that accused never updated his registration to include gold trading in his registered activities. In fact, the group consensus was that no one can tell from the filed ITRs that

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[65] Judicial Affidavit of Nilda T. Se dated July 30, 2014, Exhibit "P-1411," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4700 to 4718.
[66] TSN dated September 3, 2014, pp. 9 to 23.

he was engaged in selling gold as the sales and receipts that were reflected in his ITRs pertained only to his gift shop business.

Their group was authorized to examine the books of accounts and accounting records of the accused for all internal revenue taxes covering the period January 1, 2005 to December 31, 2010. Their group also personally caused the service of the LOA with attached Checklist of Requirements to the accused at the address indicated in the LOA on May 11, 2011. It was received by a Mr. Herman Chua, who placed his name, signature, as well as the date and time of receipt on the space provided in the LOA.

After the LOA was served, accused personally appeared before them on several occasions, but was unable to present any books of accounts or other accounting records pertaining to taxable years 2005, 2006, 2007, 2008, and 2009 as prescribed in the Checklist of Requirements. There was no sufficient explanation offered by the accused when he appeared before them, although, he presented a notebook bearing several entries, that was not taken into consideration in the investigation, as it does not substantially comply with the required documents listed in the Checklist of Requirements.

Their group found it highly irregular, that accused traded gold amounting to hundreds of millions of pesos for the subject taxable years, but the only financial record that he was able to present were entries in a notebook, which were not supported by receipts, sales invoices, vouchers, and other related documents.

They also executed a Joint-Complaint Affidavit against the accused for violations of Sections 254 and 255 of the Tax Code, and by authority of the BIR, filed the same with the DOJ.

They proceeded to inform accused of their findings with regard to his tax deficiencies, by serving to him a Notice to Taxpayer with its attachment, denominated as a Computation of Deficiency Income Tax. The said written notice informed the taxpayer that the findings of the audit investigation conducted indicate that additional taxes or deficiency assessments have to be paid. The accused complied with the directive in the said Notice to Taxpayer to appear before them at an informal conference, to give him an opportunity to present his side of the case.

During the informal conference, accused again failed to submit any document, other evidence, or any acceptable justification that would support any changes in their computation of his tax deficiency. Since accused failed to submit any documents to support any changes in the computation, they recommended the issuance of a

PAN, which was issued on September 5, 2012, and served on September 6, 2012.

The PAN was personally served at the stated address and received by Ms. Elma B. Abaja. Thereafter, they received a reply to the PAN dated September 21, 2012. Finding no merit on the issues raised by the accused in his reply to the PAN, we recommended the issuance of the FAN or FLD against him. The FLD dated October 30, 2013, with its attached annexes and audit results/assessment notices, were issued against the accused, and served on December 2, 2013. It was received by Ms. Elma B. Abaja, who represented herself as an authorized representative of the accused. On January 2, 2014, they received a request for reinvestigation from the accused.[67]

On cross-examination, she testified that during their preliminary investigation, they gathered information about the accused from the ITS. They received information from the BSP that the accused was a gold trader who is not filing its correct income tax. They were also able to obtain information from third parties, such as the BSP, and RDO – Sta. Cruz.

Their investigation was concluded before the filing of the joint complaint affidavit, based on the documents gathered from third parties were sufficient enough to establish fraud. The accused failed to submit any of the documents listed in the LOA.[68]

On re-direct examination, she testified that they served the Notice of Informal Conference after the filing of the joint complaint. The purpose of the informal conference is merely for the computation of tax liability. They filed the case first before they made the assessment.[69]

4. **Marites F. Encina** testified that since March 1, 2014, she is the Acting Manager of the Budget and Disbursement Division (BADD), Financial Services and Data Management Group (FSDMG) of the BSP. Prior to her appointment as Acting Manager, she also served as Financial Control Supervisor, Bank Officer II, and Assistant Manager. As Acting Manager of BADD-FSDMG, she performs the following functions: 1) Budget Administration; 2) Disbursements; and 3) Gold Accounting.

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[67] Judicial Affidavit of Marites P. Arias dated September 24, 2014, Exhibit "P-1412," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4720 to 4735.
[68] TSN dated October 1, 2014, pp. 13 to 30.
[69] TSN dated October 1, 2014, pp. 31 to 36.

She is familiar with accused Rex Chua Co Ho because she received communications from the Office of the Deputy Governor Resource Management Sector, that a subpoena from the CTA requiring an authorized representative of the BSP to appear as witness in relation to a tax evasion case filed against Rex Chua Co Ho. She was also required to bring documents relating to the gold transactions of the accused. Per their records, they issued a Certification dated December 10, 2012, certifying the total annual gold sales of the accused for the years 2005 to 2009, signed by then Deputy Director Simeona G. Llanes.[70]

On cross-examination, she testified that her knowledge of the transactions is based on the records of the BSP. She is not the custodian of documents such as the certification, letters of delivery and receipts. She retrieved the said documents from the secretary of their then Deputy Director Gillanes. The certification refers to annual gold sales, and not annual sales profit of the accused. Prior to the signing of Deputy Director Gillanes, she was asked to review the document, in her capacity as the Assistant Manager of the BADD, as it is within her function to review the said document.[71]

Upon completion of the testimonies of the foregoing witnesses, the prosecution filed its *Formal Offer of Evidence*[72] on April 30, 2015, to which the accused filed his *Comment/Opposition Ad Cautelam (To Plaintiff's Formal Offer of Evidence)*[73] on May 25, 2015.

In the Resolution[74] dated July 1, 2015, this Court admitted Exhibits "P-2," "P-3" to "P-3-e," "P-3-a-1," "P-3-b-1," "P-3-c-1," "P-3-d-1," "P-3-e-1," "P-4" to "P-96," "P-97" to "P-243," "P-244" to "P-660," "P-661" to "P-1012," "P-1012-March 11, 2014" to "P-1380," "P-4-a" to "P-1380-a," "P-4-b" to "P-1380-b," "P-1382," "P-1382-a," "P-1384," "P-1385," "P-1385," "P-1386," "P-1386-a," "P-1386-b," "P-1387" to "P-1387-c," "P-1387-b-1," "P-1388" to "P-1388-a," "P-1389," "P-1389-a," "P-1389-b," "P-1389-c," "P-1390" to "P-1390-c," "P-1390-b-1," "P-1391," "P-1391-a," "P-1391-b," "P-1391-c," "P-1392" to "P-1392-c," "P-1392-b-1," "P-1393," "P-1393-a," "P-1393-b," "P-1394" to "P-1394-d," "P-1394-b-1," "P-1395," "P-1396" to "P-1396-c," "P-1396-d," "P-1396-e" to "P-1396-g," "P-1396-h," "P-1396-I" to "P-1396-j," "P-1397," "P-1397-a," "P-1398," "P-1398-a" to "P-1398-c," "P-1399," "P-1399-a," "P-1400," "P-1400-a" to "P-1400-c," "P-1403," "P-1403-b," "P-1403-c,"

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70 Judicial Affidavit of Marites F. Encina dated February 24, 2015, Exhibit "P-1413," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4753 to 4758.
71 TSN dated March 4, 2015, pp. 10 to 15.
72 Docket – Vol. 6 (CTA Crim. Case No. O-287), pp. 3186 to 3478; Docket – Vol. 7 (CTA Crim. Case No. O-287), pp. 3479 to 3999; Docket – Vol. 8 (CTA Crim. Case No. O-287), pp. 4000 to 4606; Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4607 to 4762.
73 Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4858 to 4869.
74 Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4881 to 4883.

"P-1404," "P-1404-a" to "P-1404-c," "P-1405" to "P-1405-c," "P-1405-a-1," "P-1405-d" to "P-1405-f," "P-1406," "P-1406-a" to "P-1406-c," "P-1407," "P-1408," "P-1408-a," "P-1408-b," "P-1409," "P-1409-a," "P-1410," "P-1410-a," "P-1410-b," "P-1410-c" to "P-1410-g," "P-1411," "P-1411-a," "P-1412," "P-1412-a," "P-1413," "P-1413-a," and "P-1414," subject to the final evaluation and appreciation of their purpose, materiality, relevancy, and probative value to the issues involved in the case.

On the other hand, the Court denied the admission of Exhibits "P-1," "P-1383," "P-1401," "P-1402," and "P-1403-a," for failure to present the original. Meanwhile, there were no Exhibits "P-653," and "P-808," and there were two of the following: Exhibits "P-514," "P-514-a," "P-514-b," "P-833-a," "P-833-b," "P-1012," "P-1012-a," "P-1012-b," "P-1146," "P-1146-a," "P-1146-b," "P-1384," "P-1396-a," "P-1396-b," and "P-1396-c."[75]

To counter the prosecution's evidence, the defense presented five (5) witnesses, namely: 1) accused Rex Chua Co Ho; 2) Atty. Clifford E. Chua; 3) Marietta Akol; 4) Marites F. Encina; and 5) Enrico T. Pizarro. They testified as follows:

1. Accused **Rex Chua Co Ho** testified that he is forty (40) years old, a businessman, with address at 952 Ongpin Street, Sta. Cruz, Manila. The sales of silver and gold to the BSP took place between 2005 to 2009. He learned the trade from his late father, who sold gold to the BSP from the early 80s to the late 90s.

He testified that the BSP advised him that they are authorized to buy gold from the public. Gold traders were highly encouraged to sell to the BSP because they need the gold reserve for the betterment of the economy of our country. The BSP encouraged this sale of gold and silver by making it very simple. They did not require gold traders to apply or acquire business permits and license to sell to them. You can just go there and sell your gold to them. The BSP also advised them that their transaction with them falls within the zero-rated transaction and it is exempted from the 12% VAT.

As a layman, he relied on the BSP's assurance, advice, that the transaction were tax exempt, so in good faith, he believed that his sales of gold to the BSP were tax exempt. He relied on the BSP's advice, because the BSP is the central monetary authority of the Philippines and it is a very reputable agency that advised him.

[75] Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4881 to 4883.

For the record, he stated that he graduated from De La Salle, with a degree in BS Computer Science.

He further testified that he also asked other gold traders, who believed that their transactions were tax exempt and they did not include the gold sales in their ITRs. Thereafter, he reconfirmed it with the BSP, who told him that gold transactions are tax exempt. In fact, they are not withholding taxes from the gold traders. They also had a meeting on May 23, 2011, regarding the tax issues.

During the meeting the BSP and the BIR had issues among themselves. The BSP then confirmed that gold transactions are tax exempt. The BSP was then fixing the tax charges to the gold traders with the BIR at that meeting and the BSP mentioned that they will not collect tax from gold traders until they have an agreement with the BIR. He stated that he decided to sell gold to the BSP, in the honest belief that it is tax exempt, and even the BSP does not withhold tax from them. He also stated that he knows for a fact that the BSP is not a taxing authority.

He acquires gold from other gold sellers and he incurs expenses in acquiring them. After the acquisitions, he delivers the gold to the BSP. He goes to the reception area and brings them the gold. They will weigh the gold and will issue a reception note. The next day, they will issue a check, which contains 93% of the payment of the gold. Then, they will evaluate the gold. If it's good enough, they will pay the 7% balance within two to three weeks. He stated that his income was very minimal, and he sometimes breaks even or incurs losses on the transactions. This is because he had to shell out high acquisition costs, and deal with the minimal income and increasing price of gold. Despite not earning from the gold sales, he continued to sell gold to the BSP because it has an easier turnover and guaranteed payment. It's easy to transact with them and it is safe. If he sells outside, he might not get paid. He also thinks that he may be able to help the economy.

With regard to his income, he asked an accountant to prepare his income statements for 2005 to 2009, who will demonstrate his income and expenses in his gold trading activities.

He filed his annual income tax return whenever he has income. He needs to file his ITR as an obligation to his country. He did not include the gold sales because of the representation and assurance of the BSP that it was a tax exempt transaction. He categorically admitted that his transactions with the BSP were never included in his income tax returns.

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He only became aware that the income from gold transactions with the BSP were subject to income tax when he received the LOA issued by the BIR. The LOA came on May 10, 2011, while the meeting at the BSP was held on May 23, 2011.

When asked who in the BSP advised him that the gold transactions were tax exempt, he admitted that he merely understood that they are not collecting tax. Sometimes, they would have a meeting with Director Nestor Salano and other directors.[76]

On cross-examination, he admitted that he is the accused and person charged in the case. He stated that he incurred minimal losses, but he continued with gold trading for five (5) years, from 2005 to 2009. He stated that he did not have any income from the transactions during the subject period, as per the financial statements prepared by his accountant.

When asked if he inquired about any rule or regulation issued by the BIR to support the representation made by the BSP, he asserted that he believed that it was a tax exempt transaction. He also confirmed that he was aware that the taxing authority was the BIR and not the BSP.

He said that as a jewelry store owner, he is aware that all income are subject to tax. He is also aware, that as a businessman, he needs to keep records, receipts of all of his business transactions. He even hired an accountant to prepare his ITR and financial statements. However, when he signs the ITRs and financial statements, his accountant does not explain the things that are indicated in the said documents. He goes over the documents and signs it, confirming that he understands everything.

He explained that despite losses, he continued to sell gold to the BSP because it is easier for him to liquidate the gold and in his own way, help the economy of the Philippines. He did not advise his accountant about his income from his gold transactions because he had no income, only minimal losses for five (5) years. His accountant based his computation on the cash payments to the gold sellers and the amounts he received from the BSP. However, he admitted that he did not issue receipts when he bought gold from the gold sellers.[77]

2. **Atty. Clifford E. Chua** testified that he is not related to the accused, and that he is being presented as an expert witness. He has been an accountant for more than seventeen (17) years, and is also a lawyer. He used to work for the Tax Division of Punong Bayan

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[76] TSN dated July 22, 2015, pp. 3 to 32.
[77] TSN dated July 22, 2015, pp. 32 to 53.

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and Araullo, had a part in an accounting firm, a lawyer by profession, and has also been appointed as an ICPA at the CTA.

On May 2013, he was engaged by the accused to verify, compile and reconstruct the latter's accounting records and books of accounts, relating to his gold transactions with the BSP. There was a need to reconstruct the accounting records because there were sales to the BSP which the accused did not report or include in the ITR, and he need to reconstruct the corresponding costs of the transactions. In reconstructing the subject accounting records, he used third party documents from the BSP as his basis, as well as other reasonable documents, in addition to general accounting and auditing principles.

The report contains the summary of the trading sales transactions of the accused with the BSP, for the years December 31, 2005 to 2009, and the comparison and verification of the amounts presented, summary of the daily trading sales and transactions of the accused in relation to the published rates of selling gold per *troy ounce* to grams and per dollar, including the peso and dollar exchange rates. The summary of monthly trading sales transaction of the accused with the BSP, for years December 31, 2005 and 2009, the summary of the trading costs associated with the sales of the accused with the BSP for December 31, 2005 to 2009, and the gross, profit, and loss associated with the said sales transactions and the expenses, which were unsupported by the accused.

In his report, he obtained from the BSP, a printout of the transactions, then converted that per day transactions to per *troy ounce* to per grams. Based on that, they recomputed the total selling price of the transactions per trading by using that formula, to wit:

"Cost of quantity sold per gram=per *troy oz.* (price of gold in USD x USD exchange rate x conversion of *troy oz.* to grams x net impurity x assay = refining charges.

Net impurity	= 0.998
Assay	= 0.997
Conversion of *troy oz.* to grams	= 31.1035
Refining charge	= 1.10"

Thereafter, he computed the summary of the trading sales, and using the same formula, he recomputed the cost of the sales. The costs were not supported by official receipts based on their industry practice. He used the industry standard in coming up with the costs and not the actual costs. It's the formula for industry practice, and not based on official receipts.

There were several purchases by the accused in this case, but he only used the formula to get and reconstruct the cost, because he did not secure any receipt evidencing the purchase of the accused from gold sellers. The computation was based on matching principles in generally accepted auditing and accounting principles, and not actual cost. This was because the taxpayer did not maintain official receipts in his records.

Based on the report, the accused suffered from continuous net losses for the years 2005 to 2009. The said income losses were not reflected in the ITRs of the accused.[78]

On cross-examination, he testified that the reasonable documents he mentioned in his testimony came from the records of the BSP on the sales transactions and on the assay formula used by the BSP in gold transactions. There were no receipts for the costs, so he had to use the accounting principle of matching of revenues with costs, to reconstruct the cost component of the sales to the BSP. In this case, the cost he considered in his computations was just based on industry practice and not actual costs.

Based on accounting standards, actual costs should be given more weight than industry practice. However, there were actually no documents to represent the purchase, and the price of gold changes every day.

He was engaged by the accused to reconstruct the cost based on accounting principles because if there is revenue, there should be a matching cost. There is a need to reconstruct because according to the accused, there are no receipts. They bought the gold from third parties who did not issue any receipt.[79]

On re-direct examination, he testified that he was able to submit reconstruction of expenses for other taxpayers, even without proof of expenses. He just based it on the principle that there can be no revenue if there is no cost. There would be no situation wherein the accused would have no cost, because he would have to buy the gold from a source and sell it to the BSP. Unless the accused is merely an agent and transferred the gold to the BSP as an agent, he would have surely incurred costs.[80]

On clarificatory questions, he admitted that in some cases, the BIR accepts the reconstruction of the financial report of taxpayers, but it is not for the reconstruction of the whole, but only for some of

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[78] TSN dated September 9, 2015, pp. 3 to 36.
[79] TSN dated June 22, 2016, pp. 3 to 20.
[80] TSN dated June 22, 2016, pp. 21 to 23.

the expenses. For instance, if he cannot find the receipt, he would utilize the lease contract instead of the receipt. In this particular case, there was no contract, but there would be instances that some examiners would still accept it. Not all examiners would accept it though, and it is not considered a regular occurrence.[81]

3. **Marietta Akol** testified that she is currently holding the position of Bank Officer II, Office of the General Counsel. It is part of her duty as Acting Assistant Manager to certify documents that are part of the records of BSP. She identified the copy of the Memorandum certified by their office, but stated that they just have the records for safekeeping, but she was not involved in the preparation thereof.[82]

4. **Marites F. Encina** testified that she is the Deputy Director of the Financial Services Group, Security Plant Complex, BSP. Prior to her designation as Deputy Director, she held the positions of Financial Control Assistant, Bank Officer II, Assistant Manager, and Manager.

In 2007, she was the Assistant Manager of the Financial Services Group. As far as her group was concerned, they did not receive any instruction to implement any change in the on-going payment processing of the gold payments, despite the issuance of the Memorandum dated July 9, 2007.

The collection of taxes on gold transactions started on July 2011. She is not familiar with Office Order No. 0927. She also has no knowledge as to how information is disseminated to the public. Their office is only in charge of processing the payments.[83]

5. **Enrico T. Pizarro** testified that he was appointed as an ICPA to gather documents and evidence in relation to the tax assessment filed against the accused for the years 2005, 2006, 2007, and 2008. He was tasked to summarize the results and submit a report to the CTA with regard to the findings noted during the performance of the examination.

He examined and verified receipts, vouchers and other long accounts as stated in the report. He prepared schedules and summaries containing chronological listings, numbers, dates and amounts covered by receipts and invoices, documents, etc. He ascertained the findings as to the compliance and substantiation requirements under the pertinent tax laws, rules, regulations and

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[81] TSN dated June 22, 2016, pp. 24 to 25.
[82] TSN dated November 23, 2016, pp. 11 to 19.
[83] TSN dated May 10, 2017, pp. 4 to 12.

jurisprudence. He provided the reproduction of the original and comparison with the original documents, as well as marked them as documentary exhibits attached to the ICPA Report. He submitted the formal report certifying the authenticity and veracity of the findings and conclusions of the audit procedures.

His report was based on the following documents: joint complaint affidavit, certified list of BSP gold transactions, ITRs for 2005, 2006, 2007, 2008, and 2009, including copies of the certification of annual gold sales, summary of deficiency income tax prepared by the BIR and summary of the letter of delivery.

After conducting the audit, he noted that there were sales included in the annual gold sale transaction that do not have the corresponding letters of delivery and sale. The amount of sales that was considered in computing for deficiency income tax were different, higher than those verified or audited. The amount of cost associated to the gold transactions with the BSP were not considered in computing for deficiency income tax. It should have been done in the process of matching cost against revenue. He also submitted supplemental reports because some additional documents were not submitted with the original reports.

He stated that the cost of sales is the direct cost that you pay for certain transactions. In this case, the cost of sales are refining charges and other expenses, ordinary and necessary in gold trading with the BSP. In accounting principles, the principle of association of cost against revenue and matching of cost against revenue, should be followed in computing for net income. There should have been a corresponding cost for every transaction. In the computation of taxable income, he considered that there are costs related to the trading transaction or sale with the BSP.

However, the BIR did not match the cost in computing for deficiency income tax. They assessed the deficiency tax based only on the gross sales to the BSP. According to accounting principles and the NIRC, ordinary and necessary expenses should have been considered in the computation of taxable income. Therefore, all the cost related to the transaction is derived by summarizing all the quantities of gold being sold to the BSP and referencing the published rates of the BSP during the time of the transaction.

The accused incurred losses for taxable years 2005, 2006, and 2007, while he had income in 2008 and 2009.

The accused bought gold from other sources, and then sold those purchases to the BSP. The cost of purchase is higher when the accused purchased the gold from other suppliers, but he continued selling despite that.[84]

On cross-examination, he testified that he verified letters of delivery and sale from the BSP, and not receipts, vouchers and long accounts.

He confirmed that the accused received income from the BSP through the letter of deliveries, but accused did not include this in the annual ITR for taxable years 2005, 2006, 2007, 2008, and 2009. As far as the transactions with BSP, it was not included in the annual declaration of revenue and cost in the ITR as far as the information in relation to the transaction with BSP.

He further stated that as far as the NIRC is concerned, it is required that transactions shall be substantiated by receipts, invoices or any other documents that will prove that the transaction actually existed and it was properly valued.

In this case, the only receipt presented by the accused was the letter of delivery as far as the quantity of transactions being sold to the BSP. There were no receipts coming from the suppliers of the accused.[85]

After the completion of the oral testimonies of defense witnesses, accused, through counsel, filed his *Formal Offer of Evidence*[86] on August 22, 2017, while the prosecution failed to file comment, despite notice. In the Resolution[87] dated October 19, 2017, this Court admitted Exhibits "A-2182," "A-2183," "A-2185," and "A-2186." However, it denied Exhibits "A-1" to "A-1378," "A-1-A" to "A-1378-A," "A-1-B" to "A-1378-B," "A-1-C" to "A-1378-C," "A-1-D" to "A-1378-D," "A-1-E" to "A-1378-E," "A-1379" to "A-2160," "A-1379-A" to "A-2160-A," "A-1379-B" to "A-2160-B," "A-1379-C" to "A-2160-C," "A-1379-D" to "A-2160-D," "A-2161" to "A-2161-A," "A-2161-B" to "A-2161-C," "A-2161-D," "A-2162," "A-2162-A," "A-2162-B," "A-2162-C," "A-2162-D," "A-2162-E," "A-2163," "A-2164," "A-2164-A," "A-2165," "A-2165-A," "A-2166," "A-2166-A," "A-2167," "A-2167-A," "A-2168," "A-2168-A," "A-2169," "A-2170," "A-2171," "A-2172," "A-2173," "A-2174," "A-2175," "A-2176," "A-2177," "A-2178," "A-2179," "A-2180," "A-2181," "A-2181-A," "A-2182," "A-2183," "A-2184," "A-2185," and "A-2186" for failure to correspond to the markings in the ICPA Reports; and Exhibits "A-2182-A," "A-2183-A," "A-2184-A," "A-2185-

[84] TSN dated July 5, 2017, pp. 5 to 24.
[85] TSN dated July 5, 2017, pp. 24 to 30.
[86] Docket – Vol. 10 (CTA Crim. Case No. O-287), pp. 5256 to 5283.
[87] Docket – Vol. 15 (CTA Crim. Case No. O-287), pp. 7684 to 7685.

A," and "A-2186-A" for not being found in the records. The parties were likewise ordered to submit their respective memoranda within thirty (30) days from notice.

Accused filed his *Motion for Reconsideration (Re: Resolution dated October 19, 2017) (With Motion for Extension of Time to File Memorandum)*[88] on November 20, 2017. In the Resolution[89] dated March 7, 2018, accused's Motion for Reconsideration was partially granted, and the following Exhibits were admitted: Exhibits "A-1" to "A-39" (with submarkings), "A-40" to "A-40-D," "A-41" to "A-89" (with submarkings), "A-90," "A-91" to "A-109" (with submarkings), "A-110" to "A-110-B," "A-110-D," "A-110-E," "A-111" to "A-137" (with submarkings), "A-138" to "A-138-C," "A-138-E," "A-139" to "A-141" (with submarkings), "A-142" to "A-142-D," "A-143" to "A-170" (with submarkings), "A-171" to "A-171-C," "A-172" to "A-211" (with submarkings), "A-212," "A-213" (with submarkings), "A-214" to "A-214-B," "A-214-D," "A-214-E," "A-215" to "A-217" (with submarkings), "A-218" to "A-218-B," "A-219" to "A-231" (with submarkings), "A-232" to "A-232-C," "A-232-E," "A-233" to "A-303" (with submarkings), "A-304" to "A-304-C," "A-305" to "A-359" (with submarkings), "A-360" to "A-360-B," "A-360-D," "A-360-E," "A-361" to "A-371" (with submarkings), "A-372," "A-372-B" to "A-372-E," "A-373" to "A-385" (with submarkings), "A-386" to "A-386-B," "A-386-D," "A-386-E," "A-387" to "A-401" (with submarkings), "A-402" to "A-402-D," "A-403" to "A-436" (with submarkings), "A-438" to "A-491" (with submarkings), "A-492" to "A-492-C," "A-493" to "A-500" (with submarkings), "A-501" to "A-501-B," "A-501-D," "A-501-E," "A-502" to "A-573" (with submarkings), "A-574," "A-574-B" to "A-574-E," "A-575" to "A-633" (with submarkings), "A-634" to "A-634-C," "A-634-E," "A-635" to "A-686" (with submarkings), "A-687," "A-688" to "A-709" (with submarkings), "A-710-A" to "A-710-E," "A-711" to "A-916" (with submarkings), "A-917" to "A-917-C," "A-918" to "A-947" (with submarkings), "A-948" to "A-948-C," "A-948-E," "A-949" to "A-966" (with submarkings), "A-967" to "A-967-B," "A-968-C" to "A-968-E," "A-969" to "A-1000" (with submarkings), "A-1001" to "A-1001-B," "A-1001-D," "A-1001-E," "A-1002" to "A-1025" (with submarkings), "A-1026" to "A-1026-C," "A-1026-E," "A-1027" to "A-1062" (with submarkings), "A-1063," "A-1063-B" to "A-1063-E," "A-1064" to "A-1091" (with submarkings), "A-1092" to "A-1092-B," "A-1093" to "A-1193" (with submarkings), "A-1194," "A-1194-A," "A-1194-C" to "A-1194-E," "A-1195" to "A-1216" (with submarkings), "A-1217" to "A-1217-C," "A-1217-E," "A-1218" to "A-1246" (with submarkings), "A-1247" to "A-1247-D," "A-1248" to "A-1270" (with submarkings), "A-1271" to "A-1271-D," "A-1272," "A-1272-A," "A-1272-C" to "A-1272-E," "A-1273" to "A-1767" (with submarkings), "A-1768" to "A-1768-C," "A-

[88] Docket – Vol. 15 (CTA Crim. Case No. O-287), pp. 7686 to 8114.
[89] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8367 to 8371.

1769" to "A-1774" (with submarkings), "A-1775" to "A-1775-A," "A-1776" to "A-1911" (with submarkings), "A-1912," "A-1913" to "A-1986" (with submarkings), "A-1987" to "A-1987-C," and "A-1988" to "A-2160" (with submarkings).

Meanwhile, Exhibits "A-40-E," "A-90-A" to "A-90-E," "A-110-C," "A-138-D," "A-142-E," "A-171-D," "A-171-E," "A-212-A" to "A-212-E," "A-214-C," "A-218-C" to "A-218-E," "A-232-D," "A-304-D," "A-304-E," "A-360-C," "A-372-A," "A-386-C," "A-402-E," "A-437," "A-437-A" to "A-437-E," "A-492-D," "A-492-E," "A-501-C," "A-574-A," "A-634-D," "A-687-A" to "A-687-E," "A-710," "A-917-D," "A-917-E," "A-948-D," "A-967-C" to "A-967-E," "A-968," "A-968-A," "A-968-B," "A-1001-C," "A-1026-D," "A-1063-A," "A-1092-C" to "A-1092-E," "A-1194-B," "A-1217-D," "A-1247-E," "A-1271-E," "A-1272-B," "A-1768-D," "A-1775-B" to "A-1775-D," "A-1912-A" to "A-1912-D," "A-1987-D," were denied for not being found on record. Exhibits "A-2161," "A-2161-A," "A-2161-B," "A-2161-C," "A-2161-D," "A-2162," "A-2162-A," "A-2162-B," "A-2162-C," "A-2162-D," "A-2162-E," "A-2163," "A-2164," "A-2164-A," "A-2165," "A-2165-A," "A-2166," "A-2166-A," "A-2167," "A-2167-A," "A-2168," "A-2168-A," "A-2169," "A-2170," "A-2171," "A-2172," "A-2173," "A-2174," "A-2175," "A-2176," "A-2177," "A-2178," "A-2179," "A-2180," "A-2181," "A-2181-A," "A-2182-A," "A-2183-A," "A-2184-A," "A-2185-A," and "A-2186-A," were denied for failure to present the originals.

Finally, the Court noted that there are double markings for Exhibits "A-40-D," "A-91-A" to "A-91-E," "A-138-C," "A-143-E," "A-211-A" to "A-211-E," "A-216-C" to "A-216-E," "A-360-A," "A-386-A," "A-403-E," "A-491-D," "A-491-E," "A-501-A," "A-710-A," "A-918-D," "A-918-E," "A-948-C," "A-948-C," "A-951," "A-951-A" to "A-951-E," "A-1001-B," "A-1027-D," "A-1073-A," "A-1093-C" to "A-1093-E," "A-1151," "A-1151-A" to "A-1151-E," "A-1217-E," "A-1271-D," "A-1769-D," "A-1776-B" to "A-1776-D," and "A-1987-C"; one document was marked five times as Exhibit "A-1912"; Exhibits "A-2167" and "A-2167-A," which accused claims to be prosecution Exhibit "P-1398" and marked as Exhibits "A-2167" and "A-2167-A" for accused, does not have the latter marking.

On March 28, 2018, accused filed an *Omnibus Motion: 1) For Reconsideration of the Resolution Dated 09 March 2018; and 2) For Extension of Time to File Memorandum.*[90] In the Resolution[91] dated April 19, 2018, accused was ordered to file the original marked exhibits subject of his Omnibus Motion. In compliance thereto, accused filed his *Compliance*[92] on May 3, 2018.

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[90] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8374 to 8384.
[91] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8387 to 8388.
[92] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8389 to 8393.

In the Resolution[93] dated June 21, 2018, the Court admitted Exhibits "A-2161," "A-2161-A," "A-2161-B," "A-2161-C," "A-2161-D," "A-2162," "A-2162-A," "A-2162-B," "A-2162-C," "A-2162-D," "A-2162-E," "A-2163," "A-2167," "A-2167-A," "A-2181," "A-2181-A," "A-2183-A," "A-2184-A," "A-2185-A," and "A-2186-A."

On August 23, 2018, plaintiff filed a *Motion to Admit Attached Memorandum,*[94] with attached *Memorandum (For the Plaintiff),*[95] while the accused filed a *Memorandum (For Accused)* [96] on September 3, 2018. On September 20, 2018, accused *Comment/Opposition (In re: Plaintiff's Motion to Admit Attached Memorandum dated 23 August 2018).*[97] In the Resolution[98] dated October 19, 2018, the plaintiff's *Motion to Admit Attached Memorandum* was granted, the *Memorandum (For the Plaintiff)* was admitted, and the instant consolidated cases were submitted for decision.

Hence, this Decision.

THE ISSUES

The issues in these consolidated criminal cases, as stated in the *Pre-Trial Order* dated May 26, 2014, are as follows:

> **"B. ISSUES**
>
> **1. FACTUAL ISSUES**
>
> a. Whether the Bureau of Internal Revenue correctly computed accused's net income derived from gold transactions with the *Bangko Sentral ng Pilipinas.*
>
> b. Whether accused has tax deficiencies.
>
> **2. LEGAL ISSUE**
>
> Whether accused is guilty as charged."[99]

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[93] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8412 to 8420.
[94] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8449 to 8452.
[95] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8453 to 8465.
[96] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8529 to 8567.
[97] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8572 to 8581.
[98] Docket – Vol. 16 (CTA Crim. Case No. O-287), pp. 8584 to 8587.
[99] Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.

Plaintiff's Arguments:

The prosecution contends accused is the sole proprietor of Rex Gift Shoppe and is likewise engaged in the business of selling gold and silver to the BSP during taxable years 2005 to 2009.

Thus, accused is obligated to supply correct and accurate information in his ITRs for taxable years 2005 to 2009. However, accused willfully, unlawfully, and feloniously failed to supply correct and accurate information in his ITRs for taxable years 2005 to 2009.

Accused's counter-arguments:

In his Memorandum, accused counters that contrary to the BIR's false allegations, accused's acts are justified and are made in good faith, considering that he only strongly relied in BSP's representation that his gold and silver sales transactions with the BSP are tax-free.

Allegedly, he can never be criminally indicted for violation of Section 255 of the NIRC, considering that no actual fraud, essential to tax fraud cases, can be imputed against him. In this case, the BIR failed to establish the essential element of willful violation of Section 255 of the NIRC.

Contrary to the BIR's baseless allegations, the *prima facie* case of fraud under Section 248 of the NIRC was sufficiently overcome by accused's evidence on record unmistakably showing that the latter never willfully neglected to report his gold and silver sales transactions with BSP.

Moreover, the BIR's computation of accused's tax liability is arbitrary and grossly incorrect considering that BIR failed to deduct accused's costs and expenses for his gold and silver sales transactions with the BSP, contrary to Section 31 of the NIRC.

Contrary to the erroneous computation of the BIR, accused actually incurred significant losses, higher than the amount he received from the BSP, from his gold and silver sales transactions with BSP, as positively shown by the Court-Appointed Independent Certified Public Accountant's Reports and Supplemental Reports (ICPA Reports). Hence, there is clearly no basis for the instant complaint since the accused has no taxable income derived from the subject transaction.

THE COURT'S RULING

In these five (5) consolidated cases, accused Rex Chua Co Ho is charged before this Court for his alleged failure to supply correct and accurate information in his Income Tax Returns for taxable years 2005 to 2009, in violation of the first paragraph of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 255 of the NIRC, as amended, states:

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

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

1. Accused is required under the NIRC of 1997 to pay any tax, make a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;

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

3. Accused willfully failed to pay such tax, make such return, keep such record, or supply such correct and accurate information, or

withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.

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

Accused Co Ho is required under the NIRC of 1997 to supply correct and accurate information in his annual Income Tax Returns.

Accused Co Ho's duty to file an annual income tax return, as well as supply correct and accurate information thereon, are based on Sections 51 and 74 of the NIRC of 1997, as amended. The pertinent portions of the said provisions read:

> "**SEC. 51.** ***Individual Return***. –
>
> (A) Requirements. -
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) Every Filipino citizen residing in the Philippines;
>
> xxx xxx xxx
>
> (4) The income tax return shall be filed in duplicate by the following persons:
>
> (a) A resident citizen – on his income from all sources;
> xxx xxx xxx
>
> (B) Where to File. – Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines,

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or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) When to File. –

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

xxx xxx xxx

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

(A) In General. — Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. <u>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.</u> 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." *(Underscoring supplied.)*

Corollary thereto, Section 32 (A) (2) of the NIRC of 1997, as amended, defines what constitutes gross income, to wit:

"SEC. 32. ***Gross Income.*** –

(A) ***General Definition.*** – Except when otherwise provided in this Title, gross income means <u>all income</u>

derived from whatever source, including, but not limited to, the following items:

x x x x

(2) Gross income derived from the conduct of trade or business or the exercise of a profession." *(Underscoring supplied.)*

Based on the foregoing provisions, it is clear that a taxpayer is duty bound to declare all of his income from *all sources*, including, but not limited to, the conduct of trade or business.

In these consolidated cases, there is no dispute with regard to the fact of filing, of accused Co Ho filed his ITRs for taxable years 2005, 2006, 2007, 2008, and 2009, as the parties have already stipulated on the genuineness, due execution and admissibility of the subject returns.[100] The question however, is whether or not accused Co Ho supplied correct and accurate information in the subject tax returns, due to the alleged non-declaration of his income from the sale of gold and silver to the BSP.

In this regard, the Court notes that accused Co Ho himself, admitted that during taxable years 2005 to 2009, he sold gold and silver to the *Bangko Sentral ng Pilipinas* under its Mint and Refinery Operations Department.[101] In relation thereto, he represented and warranted that he is the owner of the gold and silver sold to BSP as shown by the warranty in Paragraph 2 of the Letters of Delivery and Sales from BSP.[102] He likewise admitted the genuineness, due execution, and admissibility of the Letters of Delivery and Sales from the BSP, as well as his signature thereon.[103]

In fact, accused Co Ho even admitted the genuineness, due execution, and admissibility of the BSP certification of the total annual gold sales in the amounts ₱207,945,323.17, ₱414,228,805.17, ₱1,240,686,746.34, ₱1,145,350,719.77, and ₱1,932,757,566.50 for the years 2005, 2006, 2007, 2008, and 2009, respectively, issued by BSP Deputy Director Simeona G. Llanes and supported with a Summary of Gold Sales to BSP by Mr. Rex Co Ho, which was

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[100] Pre-Trial Order dated May 26, 2014; Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.
[101] Paragraph 5, Pre-Trial Order dated May 26, 2014, Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.
[102] Paragraph 14, Pre-Trial Order dated May 26, 2014, Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.
[103] Paragraphs 13 and 15, Pre-Trial Order dated May 26, 2014, Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.

prepared by the BSP's Financial Services and Data Management Group.[104]

Evidently, accused Co Ho received money from the sale of gold and silver to the BSP, and was duty bound to declare the same as part of his gross income in his ITRs. Without any valid factual or legal basis that would justify the non-inclusion thereof in his ITRs, it is clear that accused Co Ho is required by law to specifically declare *all* of his income from *all* sources. Hence, there is no question that the first element of the crime charged, that accused Co Ho is required to supply correct and accurate information in his ITRs, *i.e.*, declare all of his income from all sources, is present in this case.

Accused failed to supply correct and accurate information in his annual Income Tax Returns.

As earlier discussed, accused Co Ho sold gold and silver to the BSP and was required to declare the proceeds therefrom, as part of his gross income in his ITRs. Having established that there was income on the part of accused Co Ho, it must now be determined if accused Co Ho supplied correct and accurate information in the subject ITRs.

On this issue, this Court finds that accused Co Ho's income from the sales transactions with the BSP were not included in the subject ITRs.

A perusal of the subject tax returns vis-à-vis the BSP Certification[105] of the total annual gold sales, as well as the Letters of Delivery and Sale,[106] reveals that accused Co Ho failed to declare in his ITRs, the income received from his transactions with the BSP. This is confirmed by ICPA Enrico T. Pizarro, who testified that the transactions with the BSP were *not* included in the annual declaration of revenue and cost in the ITR, to wit:

"ATTY. CACAYURAN

Q And in the income tax return, did accused for taxable years 2005 to 2009 declare the said income?

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[104] Paragraph 16, Pre-Trial Order dated May 26, 2014, Docket – Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.
[105] Exhibit "P-1414" (requested by the Assistant Commissioner of the Enforcement Service of the BIR), Docket – Vol. 9 (CTA Crim. Case No. O-287), p. 4761; Exhibit "A-2162 (requested by Ocampo & Manalo Law Firm)."
[106] Exhibits "P-4" to "P-1380."

MR. PIZARRO

A It was not included in the annual ITR of the accused for the years 2005, 2006, 2007, 2008 and 2009.

ATTY. CACAYURAN

Q Are you aware, Mr. Witness, that accused is being indicted for failure to supply correct and accurate information in his ITR?

MR. PIZARRO

A Yes.

ATTY. CACAYURAN

Q And in your opinion, did he comply with the rule of the BIR to correctly supply correct information in his ITR based on your report, Mr. Witness?

MR. PIZARRO
A As far as the transactions with BSP, it was not included in the annual declaration of revenue and cost in the ITR as far as the information in relation to the transaction with BSP."[107]

This fact was likewise affirmed by the testimony of defense witness, CPA Clifford E. Chua,[108] and categorically admitted by accused Co Ho himself, to wit:

"ATTY. VALDEZ

Q Mr. Witness, what action did you take after your gold sales transactions with BSP in relation to your income tax return?

MR. REX CHUA CO HO

A I annually filed my income tax return whenever I have income. I need to file the same as an obligation to my country. I did not include the gold sales because of the representation and assurance of the BSP that it is a tax exempt transaction.

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[107] TSN dated July 5, 2017, pp. 27 to 28.
[108] TSN dated September 9, 2015, p. 14.

JUSTICE VICTORINO

So you now admit that your transaction with the BSP were never included in your income tax return?

MR. REX CHUA CO HO

Yes, your Honors."[109]

With the manifest admission of accused Co Ho that his ITRs did not include the income from the sale of gold and silver to the BSP, it is clear that the second element of the crime charged has been sufficiently proven in these consolidated cases.

The prosecution was able to prove beyond reasonable doubt that the failure of accused Co Ho to supply correct and accurate information was willful.

In addition to the presence of the first two elements, it is mandated that the prosecution prove beyond reasonable doubt, that the act of accused Co Ho, in failing to supply correct and accurate information in his income tax returns for taxable years 2005 to 2009, was done *willfully,* with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

According to Black's Law Dictionary,[110] the term "willful" is defined as:

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

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

[109] TSN dated July 22, 2015, pp. 24 to 25.
[110] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> Act is 'willful' within meaning of section *(sic)* of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.,* C.A.R.I., 504 F.2d 1306, 1315." *(Underscoring supplied.)*

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

> "Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[111] *(Underscoring supplied.)*

In this case, accused Co Ho appears to be highly educated, having graduated from De La Salle University, with a degree in BS Computer Science.[112] In fact, he even testified that he is able to read and understand everything with regard to his income tax returns, as prepared by his accountant.[113]

Likewise, having been in the jewelry store business since 1997,[114] he admitted that he is aware that *all* income are subject to tax.[115] He also admitted to knowing that as a businessman, he needs to keep records and receipts of all his business transactions.[116]

With accused Co Ho's categorical admission that he is aware of all these legal obligations, it raises suspicions when a highly educated and experienced businessman would later admit that he did not have any receipts for the gold he bought from the gold sellers.[117] Being completely knowledgeable about his liability for income tax and his duty to maintain adequate records of his business transactions, it baffles the mind why accused Co Ho would not have a single receipt to prove any purchase of gold, for the subject taxable years.

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[111] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.
[112] TSN dated July 22, 2015, p. 10.
[113] TSN dated July 22, 2015, pp. 48 to 49.
[114] TSN dated July 22, 2015, p. 32.
[115] TSN dated July 22, 2015, p. 47.
[116] TSN dated July 22, 2015, p. 47.
[117] TSN dated July 22, 2015, p. 52.

In addition, this Court notes that accused Co Ho intentionally did not declare his supposed income from the sale of gold to the BSP in the subject ITRs. In fact, when accused Co Ho was asked if he had properly advised his accountant about his income from the gold transactions, he merely answered that he had no income from the gold for five years.[118]

Instead, accused Co Ho claims that he was advised by the BSP that their transaction with them is a zero-rated transaction, and is exempted from 12% VAT.[119] Allegedly, he relied on the BSP's assurance/advice that the transaction was tax exempt, because "the BSP is the central monetary authority of the Philippines and is a very reputable agency."[120] However, he would later admit that he is fully aware that the BSP is <u>not</u> a taxing authority.[121]

On the other hand, prosecution witness RO Nilda T. Se testified that with regard to accused's alleged failure to declare his income by mistake, she is not convinced that the accused could mistake the zero rating in VAT to mean exemption from income tax as well, considering that the accused as per his tax registration has been in the retail business since 1997. Thus, as far as the BIR is concerned, the underdeclaration is willful and calculated.[122]

In addition, RO Nilda T. Se testified that she took note that accused Co Ho, for the five consecutive taxable years covered by their investigation, had consistently failed to report sales, receipts and income coming from his gold trading with BSP, when in the same years, he had gone about reporting and declaring his relatively miniscule gross sales from his gift shop business (Rex Gift Shoppe). In fact, despite yielding a much higher gross sales in "gold trading" compared to the primary industry he registered for, which was "retail sale" for the gift shop, accused never updated his tax registration details to reflect "gold trading" in the list of his "registered activities" or as an additional line of industry.[123]

This was likewise confirmed by RO Marites P. Arias, who testified that they considered the non-reporting of his gold sales went on consistently for five consecutive taxable years; and in the five taxable years that he was transacting gold with the BSP, accused never updated his registration to include gold trading in his registered

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[118] TSN dated July 22, 2015, p. 50.
[119] TSN dated July 22, 2015, p. 9.
[120] TSN dated July 22, 2015, p. 10.
[121] TSN dated July 22, 2015, pp. 21 to 22, and 43.
[122] Judicial Affidavit of Nilda T. Se dated July 30, 2014, Exhibit "P-1411," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4700 to 4719, 4708.
[123] Judicial Affidavit of Nilda T. Se dated July 30, 2014, Exhibit "P-1411," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4700 to 4719, 4706.

activities. In fact, the group consensus was that one can never tell from the filed ITRs that he was engaged in selling gold as the sales and receipts that were reflected in the ITRs purely pertain to his gift shop business.[124]

Finally, RO Marites P. Arias noted that their group found it highly irregular that with the amount transacted in his gold trading from 2005 to 2009 amounting to hundreds of millions of pesos as per BSP's official certification, the only financial record that he was able to present to them were entries in a notebook which were not supported by receipts, sales invoices, vouchers and other related documents.[125]

All the foregoing circumstances, taken together, clearly show accused Co Ho's conscious and deliberate failure to supply correct and accurate information in the subject income tax returns, by omitting his income from the sale of gold and silver to the BSP. Thus, the third element of the crime charged, is present in this case.

With respect to the imposable penalty for the crime charged in each of these consolidated cases, Section 255 of the NIRC of 1997 provides that upon conviction, a fine of not less than Ten Thousand Pesos (₱ 10,000.00), and imprisonment of not less than one (1) year, but not more than ten (10) years, shall be imposed for each case. There being no showing that accused Co Ho is disqualified from the scope of the Indeterminate Sentence Law, the same shall apply. Hence, the imposable penalty shall not be less than the minimum penalty of one (1) year, and the maximum penalty shall not exceed ten (10) years, the maximum prescribed by law.

In this case, this Court finds that the imposition of a fine in the amount of ₱ 10,000.00, and the indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, for <u>each of the consolidated cases</u>, is proper under the circumstances. The same is without prejudice to Section 280 of the NIRC of 1997, which provides for the imposition of a subsidiary personal liability at the rate of one (1) day for each Eight pesos and fifty centavos (₱ 8.50), subject to the rules established in Article 39 of the Revised Penal Code, in the event that accused Co Ho has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

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[124] Judicial Affidavit of Marites P. Arias dated September 26, 2014, Exhibit "P-1412," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4720 to 4735, 4725.

[125] Judicial Affidavit of Marites P. Arias dated September 26, 2014, Exhibit "P-1412," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4720 to 4735, 4728.

Accused Co Ho is civilly liable for income taxes due for taxable years 2005, 2006, 2007, 2008 and 2009.

With regard to the civil action for the recovery of accused's civil liability to pay taxes and penalties, the same is deemed jointly instituted in the instant criminal actions.[126] Thus, the judgment in a criminal case shall not only impose the penalty, but shall also order payment of the taxes subject of the criminal case.[127]

In this regard, this Court finds accused Co Ho liable for taxes resulting from his failure to supply correct and accurate information in his ITRs for taxable years 2005, 2006, 2007, 2008, and 2009.

Credence is given to the evidence presented by the prosecution, such as the Computation Sheet for 2005 to 2009,[128] as well as the Certification dated December 10, 2012,[129] stating that the total annual gold sales of accused Co Ho to the BSP for the years 2005 to 2009 are as follows:

YEAR	CONTENTS PAID		PESO VALUE		REFINING CHARGES	NET PAYMENT
	Gold	Silver	Gold	Silver		
2005	8,550.874	-	208,241,090.86	-	295,767.69	₱207,945,323.17
2006	13,805.755	1.434	414,709,981.06	898.00	482,073.89	414,228,805.17
2007	39,307.354	-	1,242,043,638.40	-	1,356,892.06	1,240,686,746.34
2008	29,791.228	2.250	1,146,393,154.02	1,663.40	1,044,097.65	1,145,350,719.77
2009	42,021.525	4.930	1,934,218,067.77	3,908.90	1,464,410.17	1,932,757,566.50
TOTAL	133,476.736	8.614	4,945,605,932.11	6,470.30	4,643,241.46	₱4,940,969,160.95

On the basis of the foregoing documents, the BIR computed accused Co Ho's income tax due, as stated in the PAN,[130] FLD and Audit Result/Assessment Notices,[131] as follows:

Taxable Year	Basic	Surcharge	Interest	Total
2005	67,005,404.14	33,502,702.07	103,329,033.72	203,837,139.93
2006	133,109,256.36	66,554,628.18	178,645,932.96	378,309,817.50
2007	397,556,469.18	198,778,234.59	454,049,243.45	1,050,383,947.22
2008	367,062,471.64	183,531,235.82	345,809,554.53	896,403,261.99
2009	618,820,929.12	309,410,464.56	459,227,011.50	1,387,458,405.18
			TOTAL	₱3,916,392,571.82

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[126] Section 11, Rule 9, Revised Rules of the Court of Tax Appeals (RRCTA).
[127] Section 205 (b), NIRC of 1997, as amended.
[128] Exhibit "P-1406," Docket – Vol. 9 (CTA Crim. Case No. O-287), p. 4683.
[129] Exhibit "P-1414" (requested by the Assistant Commissioner of the Enforcement Service of the BIR), Docket – Vol. 9 (CTA Crim. Case No. O-287), p. 4761.
[130] Exhibit "P-1405," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4679 to 4682.
[131] Exhibits "P-1410" to "P-1410-g," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4691 to 4699.

Likewise, this Court notes the testimonies of the prosecution witnesses, who stated that accused failed to present a single receipt or document to substantiate his expenses. In this regard, RO Josephine D. Madera testified that upon receipt of the notices, accused Co Ho personally went to the office and showed them a small notebook, allegedly containing the summary of his gold and silver sale transactions.[132] Ro Nilda T. Se, for her part, testified that as to the matter of deductible expense, the accused should have first reported and accounted for all his sales/receipt/revenue from his gold trading and thereafter claim deductible expense, if any, but only upon proper substantiation. However, the accused neither reported the income nor presented any official receipt or records for any deductible expense.[133] In fact, accused Co Ho continuously failed to submit proper supporting documents for the alleged business expenses or costs of sale, such as official receipts/invoices and other pertinent records, which are required in claiming deductions.[134] Finally, RO Marites P. Arias also testified that there was no sufficient explanation offered by the accused when he appeared before them, although he presented a notebook bearing several entries. However, this was not taken into consideration in their investigation and examination, because it does not substantially comply with the required documents listed in the Checklist of Requirements.[135]

On the other hand, accused Co Ho presented the ICPA Report, as well as a reconstruction of his alleged expenses, as computed by expert witness Atty. Clifford Chua, CPA.

This Court notes, however, that ICPA Enrico T. Pizarro himself, testified that for costs to be recognized according to the NIRC, it is required that the transaction shall be substantiated by <u>receipts, invoices, or any other documents</u>, that will prove that the transaction <u>actually existed **and** it was properly valued</u>. However, there were no receipts coming from accused's gold suppliers in this case.[136]

Moreover, accused Co Ho's own expert witness, Atty. Clifford Chua, CPA, testified that the figures for the cost of sales in his ICPA Report were <u>**not**</u> based on actual costs, but only on industry standards because the accused had no official receipts.[137] In fact,

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[132] TSN dated July 2, 2014, pp. 31 to 32.
[133] Judicial Affidavit of Nilda T. Se dated July 30, 2014, Exhibit "P-1411," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4700 to 4719, 4708.
[134] Judicial Affidavit of Nilda T. Se dated July 30, 2014, Exhibit "P-1411," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4700 to 4719, 4715.
[135] Judicial Affidavit of Marites P. Arias dated September 26, 2014, Exhibit "P-1412," Docket – Vol. 9 (CTA Crim. Case No. O-287), pp. 4720 to 4735, 4728.
[136] TSN dated July 5, 2017, pp. 28 to 29.
[137] TSN dated September 9, 2015, pp. 28 to 32; TSN dated June 22, 2016, p. 4.

there were no documents to represent the purchase,[138] and no receipts.[139]

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

> "**SEC. 34.** ***Deductions from Gross Income.*** — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> ***(A) Expenses. —***
>
> *(1) Ordinary and Necessary Trade, Business or Professional Expenses. —*
>
> xxx xxx xxx
>
> *(b) Substantiation Requirements.* — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

Without presenting credible and sufficient evidence to show the amount of expenses actually incurred by accused Co Ho in his transactions with the BSP, there can be no allowable deductions in this case. Hence, for failure of the accused to show compliance with the foregoing provision, the computations made by the BIR, as appearing in the PAN and FLD remain valid.

In fact, the Supreme Court has equated deductions for income tax purposes to tax exemptions and has ruled that they should be strictly construed in all cases, to wit:

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[138] TSN dated June 22, 2016, p. 14.
[139] TSN dated June 22, 2016, p. 18.

"It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.

Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed."[140] *(Underscoring supplied.)*

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

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

Anent accused Co Ho's civil liability, Section 248 of the NIRC of 1997, as amended, states that there is a fifty percent (50%) penalty in addition to the basic taxes due, to wit:

"**SEC. 248.** ***Civil Penalties –***

x x x x

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

[140] *Commissioner of Internal Revenue vs. General Foods (Phils.), Inc.*, G.R. No. 143672, April 24, 2003.

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of actual declarations, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein."

Prior to the promulgation of this Decision, Republic Act (RA) No. 10963 or otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law), took effect on January 1, 2018, amending pertinent provisions of the NIRC of 1997, among which is Section 249.[141] The amended provision of Section 249 reads as follows:

"**SEC. 249**. *Interest.* –

(A) *In General*. - There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid**: *Provided*, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously**.

(B) *Deficiency Interest.* -Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof,

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[141] Section 249 of the NIRC of 1997 reads:

"SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

(C) *Delinquency Interest.* xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments are introduced by the TRAIN Law, to wit:

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

   Currently, the legal interest rate is 6%,[142] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under the NIRC of 1997.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997, has been effectively eliminated.

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

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

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[143] There being no clear legislative intent to retroactively apply the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

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[142] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.
[143] *BPI Leasing Corporation vs. Court of Appeals, et al.*, G.R. No. 127624, November 18, 2003.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[144]

Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied to this case. Thus, as of January 1, 2018, the interests to be imposed must already be 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

WHEREFORE, in light of the foregoing, accused Rex Chua Co Ho is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, in **CTA Crim. Cases Nos. O-287, O-288, O-289, O-290, and O-291.** For each of the consolidated criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of ₱ 10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that accused Co Ho has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

With regard to the civil liability, Accused Rex Chua Co Ho, is hereby **ORDERED TO PAY** the total amount of **₱8,320,758,893.88**, for taxable years 2005 to 2009, inclusive of the 50% penalty imposed under Section 248 (B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Taxable Years					Total
	2005	2006	2007	2008	2009	
Basic Tax Due	₱67,005,404.14	₱133,109,256.36	₱397,556,469.18	₱367,062,471.64	₱618,820,929.12	₱1,583,554,530.44
50% Surcharge	33,502,702.07	66,554,628.18	198,778,234.59	183,531,235.82	309,410,464.56	791,777,265.22
Sub-Total	₱100,508,106.21	₱199,663,884.54	₱596,334,703.77	₱550,593,707.46	₱928,231,393.68	₱2,375,331,795.66
Add: 20% Deficiency Interest						
From April 16, 2006 to January 1, 2014 (₱67,005,404.14 x 20% x 2,818/365)	103,463,687.05					103,463,687.05
From April 16, 2007 to January 1, 2014 (₱133,109,256.36 x 20% x 2,453/365)		178,913,427.86				178,913,427.86

[144] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

From April 16, 2008 to January 1, 2014 (₱397,556,469.18 x 20% x 2,087/365)			454,630,329.41			454,630,329.41
From April 16, 2009 to January 1, 2014 (₱367,062,471.64 x 20% x 1,722/365)				346,346,069.13		346,346,069.13
From April 16, 2010 to January 1, 2014 (₱618,820,929.12 x 20% x 1,357/365)					460,131,507.30	460,131,507.30
Total Amount Due, January 1, 2014	**₱203,971,793.26**	**₱378,577,312.40**	**₱1,050,965,033.18**	**₱896,939,776.59**	**₱1,388,362,900.98**	**₱3,918,816,816.41**
Add: 20% Deficiency Interest						
From January 2, 2014 to December 31, 2017 (1460 days)						
(₱67,005,404.14 x 20% x 1460/365)	53,604,323.31					53,604,323.31
(₱133,109,256.36 x 20% x 1460/365)		106,487,405.09				106,487,405.09
(₱397,556,469.18 x 20% x 1460/365)			318,045,175.34			318,045,175.34
(₱367,062,471.64 x 20% x 1460/365)				293,694,977.31		293,694,977.31
(₱618,820,929.12 x 20% x 1460/365)					495,056,743.30	495,056,743.30
Add: 20% Delinquency Interest						
From January 2, 2014 to December 31, 2017 (1460 days)						
(₱203,971,793.26 x 20% x 1460/365)	163,177,434.61					163,177,434.61
(₱378,577,312.40 x 20% x 1460/365)		302,861,849.92				302,861,849.92
(₱1,050,965,033.18 x 20% x 1460/365)			840,772,026.54			840,772,026.54
(₱896,939,776.59 x 20% x 1460/365)				717,551,821.27		717,551,821.27
(₱1,388,362,900.98 x 20% x 1460/365)					1,110,690,320.78	1,110,690,320.78
Total Amount Due on December 31, 2017	**₱420,753,551.18**	**₱787,926,567.41**	**₱2,209,782,235.06**	**₱1,908,186,575.17**	**₱2,994,109,965.06**	**₱8,320,758,893.88**

In addition, accused Rex Chua Co Ho is **ORDERED TO PAY** the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of **₱3,918,816,816.41**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice