Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Cases Nos. 0-253 & 0-254** For violation of Sec. 255, NIRC [Failure to File ITR in 2009-2010, respectively]
-versus-	**CTA Crim. Cases Nos. 0-255 &0-256** For violation of Sec. 254, NIRC [Tax evasion covering 2009-2010, respectively]
OSCAR GARCIA y ITCHON, Accused.	**Members:** **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
	Promulgated: JUN 03 2014 3:45 p.m.

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RESOLUTION

This resolves accused's Demurrer to Evidence[1], filed on February 28, 2014, with Opposition [To Accused's Demurrer to Evidence][2] filed on March 21, 2014.

Accused Oscar Garcia Itchon is charged before this Court with violation of Sections 254 and 255 of the 1997, National Internal

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[1] Docket, CTA Criminal Case No. 0-253 (Vol. III), pp. 1108-1126.
[2] Docket, CTA Criminal Case No. 0-253 (Vol. III), pp. 1141-1167.

Revenue Code (NIRC), as amended, under four (4) separate Information which respectively reads as follows:

CRIM. CASE NO. 0-253

"The undersigned Assistant State Prosecutor accuses **OSCAR I. GARCIA** for violation of Section 255 (Failure to File Return) of the 1997 National Internal Revenue Code (NIRC), committed as follows:

That on or about the 15th day of April 2010, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **OSCAR GARCIA y ITCHON**, an individual taxpayer, who derived income within the Philippines having received the amounts for taxable year 2009 from Metropolitan Waterworks and Sewerage System, as the withholding agent, to wit:

1. Chairman- Board of Trustee-MWSS-Corporate Office-P2,744,791.22;

2. Chairman- Board of Trustee-MWSS-Regulatory Office-P2,651,200.00;

in the total amount of **Php5,395,991.22**, with a total basic tax liability due in the amount of **Php1,675,717.19**, exclusive of increments, and therefore required to file his income tax return and pay the correct tax for taxable year 2009, did then and there, willfully, unlawfully and feloniously having deliberately fail to file his income tax return for the said taxable year as required under the law, not being qualified to the system of substituted filing of return under Revenue Regulation No. 3-002, as amended, to the damage and prejudice of the government.

CONTRARY TO LAW."[3]

CRIM. CASE NO. 0-254

"The undersigned Assistant State Prosecutor accuses **OSCAR I. GARCIA** for violation of Section 255 (Failure to File Return) of the 1997 National Internal Revenue Code (NIRC), committed as follows:

That on or about the 15th day of April 2009, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **OSCAR GARCIA y ITCHION**, an individual taxpayer, who derived income within the Philippines having received the amounts for taxable year 2008 from Metropolitan Waterworks and Sewerage System, as the withholding agent, to wit:

1. Chairman- Board of Trustee-MWSS-Corporate Office-P1,707,630.62;

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[3] Docket, CTA Crim. Case No. 0-253 (Vol. I), pp. 4-5.

2. Chairman-Board of Trustee-MWSS-Regulatory Office-P1,831,200.00;

in the total amount of **Php3,538,830.62**, with a total basic tax liability due in the amount of **Php1,086,225.80**, exclusive of increments, and therefore required to file his income tax return and pay the correct tax for taxable year willfully, unlawfully and feloniously having deliberately fail to file his income tax return for the said taxable year as required under the law, not being qualified to the system of substituted filing of return under Revenue Regulation No. 3-002, as amended, to the damage and prejudice of the government.

CONTRARY TO LAW."[4]

CRIM. CASE NO. O-255
Amended Information

"The undersigned Assistant State Prosecutor of the Department of Justice accuses **OSCAR I. GARCIA** for tax evasion in violation of Section 254 (An Attempt to Evade or Defeat Tax) of the 1997 National Internal Revenue Code (NIRC), committed as follows:

That on or about the 15th day of April 2010, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **OSCAR GARCIA y ITCHON**, and an individual taxpayer who derived income within the Philippines, being the Chairman of the Board of Trustee of Metropolitan Waterworks and Sewerage System, as withholding agent, both for its Regulatory and Corporate Offices for taxable year 2009, and received the total amount of undeclared income of **Php5,395,911.22** and therefore with tax liability due in the amount of **Php1,675,717.19**, exclusive of increments and therefore obligated to pay the said amount under Sections 23 and 24 of the Tax Code, did then and there, willfully, unlawfully and feloniously attempt to make or deliberately defeat payment of correct tax in the aforementioned amount by having willfully failed to report his total income for the same taxable year and thus deliberately attempted to evade or defeat payment the correct tax to the damage and prejudice of the government.

CONTRARY TO LAW."

CRIM. CASE NO. O-256
Amended Information

"The undersigned Assistant State Prosecutor of the Department of Justice accuses **OSCAR I. GARCIA** for tax evasion in violation of Section 254 (An Attempt to Evade or Defeat Tax) of the 1997 National Internal Revenue Code (NIRC), committed as follows:

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[4] Docket, CTA Crim. Case No. 0-254, pp. 4-5.

That on or about the 15th day of April 2009, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **OSCAR GARCIA y ITCHON**, and an individual taxpayer who derived income within the Philippines, being the Chairman of the Board of Trustee of Metropolitan Waterworks and Sewerage System, as the withholding agent, both for its Regulatory and Corporate Offices for taxable year 2008, and received the total amount of undeclared income of **Php3,538,830.62** and therefore with tax liability due in the amount of **Php1,086,225.80**, exclusive of increments and therefore obligated to pay the said amount under Sections 23 and 24 of the Tax Code, did then and there, willfully, unlawfully and feloniously attempt to make or deliberately defeat payment of correct tax in the aforementioned amount by having willfully failed to report his total income for the same taxable year and thus deliberately attempted to evade or defeat payment the correct tax to the damage and prejudice of the government.

CONTRARY TO LAW."

On May 14, 2012, upon arraignment[5], the above-named accused, duly assisted by his counsel *de parte*, entered his plea of not guilty to the crimes charged against him. On June 20, 2012, a Preliminary Conference[6] was held and Pre-Trial[7] ensued. In the Pre-Trial Order[8] dated July 2, 2012, both the prosecution and defense agreed to adopt the Joint Stipulation of Facts and Issues entered in the course of the preliminary conference, with some qualifications, *viz:*

"Thus both prosecution and defense had admitted only the following:

1. That the Accused is the same person charged in the four (4) Informations.

As to the factual and legal issues, those to be resolved are:

1. Whether or not the accused was an employee of the MWSS at the time material to the information.

2. Whether or not the accused was covered by the substituted filing of Income Tax Return for taxable years 2007, 2008 & 2009.

3. Whether or not accused is liable of the crime charged in the four (4) informations.

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[5] Minutes of the Hearing dated May 14, 2012, Docket, CTA Criminal Case No. 0-253 (Vol. I), p. 342.
[6] Docket, CTA Criminal Case No. 0-253 (Vol. I), pp. 355-364.
[7] Minutes of the Hearing dated July 2, 2012, Docket, CTA Criminal Case No. 0-253 (Vol. I), p. 366.
[8] Docket, CTA Criminal Case No. 0-253 (Vol. I), pp. 367-379.

4. Whether or not the accused is liable for the alleged deficiency tax assessments as stated in the informations."

During trial, the prosecution presented the following witnesses:

1. Ms. Ma. Lourdes Sante

Direct Examination

Based on the Judicial affidavit[9] of Ms. Ma. Lourdes Sante, she is now presently designated as Revenue Officer II assigned at the National Investigation Division of the Bureau of Internal Revenue. According to her, the Bureau of Internal Revenue's (BIR) tax investigation against the accused stemmed from the inquiry made by the Senate Committee on Finance on the excessive salaries and unwarranted bonuses and allowances of Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) to its officers/directors which includes the herein accused. She said that, pursuant to NID Memorandum dated October 5, 2010, her group was directed to conduct the initial investigation on the possible tax liabilities of the accused. Her group is composed of the following persons: herself, Angela Marie Simpit, Gertrudes Eito, and headed by their Group Supervisor Gerry Saga. And, in conducting said preliminary investigation they followed the following stages: profiling of taxpayer; third party verification; consolidation and evaluation of all the data, information and documents that they gathered pertaining to the records of the accused; and, their findings and recommendations.

During the profiling of the taxpayer, her group accessed the centralized database of BIR which is the Integrated Tax Systems and found the following information from the accused: "That Mr. Garcia is a registered one-time taxpayer of Revenue District Office No. 43A, of East Pasig referred to as ONETT with Tax Identification Number 155-564-430 which was issued on September 24, 1999. Mr. Garcia used the address 14th Flr. Strata 100, Emerald Ave., Ortigas Center, Pasig City. She also stated that her group received two (2) Certifications (Exhibits "J" and "K", respectively) both dated November 30, 2010 from Mr. Florante Aninag, RDO of East Pasig, and Adelaida David, Head of the Document Processing Section of the same RDO, affirming the fact that the accused is a registered taxpayer of Revenue District Office No. 43A, East Pasig and that he did not file his Income Tax Returns for taxable years 2007, 2008 and 2009. She, likewise, stated that they were able also to secure certification (Exhibit "L") from the Information System Operation

[9] Docket, CTA Criminal Case No. 0-253 (Vol. I), pp. 381-396.

Service or ISOS issued by Asst. Commissioner Victoria Santos that no record of returns were filed by Accused for taxable years 2007 to 2009.

With respect to third party verification stage, they requested the Commission on Audit (COA) to furnish them a copy of the Report on Salaries, Allowance and other Personnel Benefits Received by principal officers and members of the governing board of GOCCs, specifically, Metropolitan Waterworks and Sewerage System for both Corporate Office and Regulatory Offices for taxable years 2006 to 2009 (Exhibits "O"' to "T").

She further testified that based on the information they gathered, they were able to determine that the accused, as a Filipino citizen deriving income within the Philippines, is legally obligated to file his income tax returns declaring therein all his income earned for the taxable years concerned and to pay the corresponding taxes due thereon. They also determined that the accused received honoraria, allowances and other personnel benefits from MWSS as Chairman of the Board both for its Corporate and Regulatory Offices beginning 2006 to 2009. She also added that the accused was not a regular employee of the MWSS, thus, he is legally obligated to file his income tax returns on the honoraria, allowances and other personnel benefits he received from MWSS. Then, her group came out with the computation of the tax liabilities of the accused.

She also testified that the foregoing findings can be corroborated by Schedule 4 (Alpha List of Payees Subject to Expanded Withholding Tax) of BIR Form No. 1604-E submitted to the BIR by the MWSS for the years 2007-2009. In the said schedule, the accused was included in the alpha list of income recipients subject to creditable/expanded withholding tax. She explained that, after subjecting the income received by accused to CWT, the accused still has the obligation to file an income tax return using BIR Form 1701 for the income he received from MWSS for the years 2007 to 2009. And, the accused should have attached BIR Form 2307 (Certificate of Creditable Tax Withheld at Source) from whom he received his income.

She testified that the foregoing findings of her group led to the issuance of the Letter of Authority and, eventually, to the filing of the criminal case against the accused.

Cross Examination

Ms. Sante testified that they were instructed, thru Memorandum dated October 5, 2010, to ascertain the veracity of the information stated in the Report of the Senate Inquiry regarding the salaries and allowances that are being received by the Board of MWSS. She also testified that they did not attach said Senate Report to their Complaint[10] and that in proceeding with the third party verification, they requested the COA to furnish them a report on the foregoing matters. She alleged that they tried writing and accessing the documents from the MWSS but there was no Answer given to them. Thus, they relied to the "Best Evidence Obtainable Rule" which is the COA Report.[11] The witness admitted that she did not verify what Ex-Officio mean; if the accused was, indeed, a Presidential Appointee; and, if the accused received the amounts stated in the COA Report. She admitted that Exhibits "AA-1", "AA-2", "AA-3", "ZZ", "C-1", "C-2", "C-3", "EE" (Alpha List) were not taken into consideration when they filed their Complaint since said exhibits were obtained only after the case was filed. The witness also disclosed that when they filed the complaint, she was not aware that the MWSS has actually been deducting Income Tax Payment from the amounts being received by the accused. She, likewise, admitted that, subsequent to the filing of the complaint, they found out that accused was actually included in the alpha list attached in Form 1604E.[12]

Re-Direct Examination

The witness testified that the name of the accused was included in the Alpha list of employees (1604E) subject to Expanded Withholding Tax. She also testified that the accused was classified by the MWSS as taxpayer with WI090, meaning individuals receiving Director's fees from the company but who are not employees of the latter.[13]

Re-Cross Examination

The witness admitted that she came to know everything about the filing and the Alpha List 1604CF when the case was already pending.[14]

2. Mr. Gerry E. Saga

Direct Examination

The witness testified that he is presently occupying the position of Revenue Officer II of the BIR.[15] He is the Group Supervisor of the team that conducted the investigation regarding the tax liabilities of the

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[10] TSN dated September 24, 2012, pp. 8-10.
[11] TSN dated September 24, 2012, pp. 16-17.
[12] TSN dated September 24, 2012, pp.24-32.
[13] TSN dated September 24, 2012, pp. 41-42.
[14] TSN dated September 24, 2012, p. 49.
[15] TSN dated October 8, 2012, p. 11.

accused. He claimed that the accused did not file his Income Tax Returns in the RDO 43A and Information System and Operation Service.[16] He stated that his group served the Letter of Authority No. 2-LOA-11-2010-000257 to a certain Jenny C. Enriquez, the Executive Assistant of the accused.[17] Thereafter, they filed a Joint Complaint Affidavit before the Department of Justice, then a Joint Reply Affidavit. They also completed drafting the Preliminary Assessment Notice (PAN)[18] and Final Assessment Notice (FAN)[19]. The PAN was served on September 29, 2011[20] after the filing of the complaint and the same was received by the guard in the house of the accused[21]. The FAN was likewise received by the same guard.[22] Then, the witness presented a power point presentation of the computation of their tax assessments against the accused based solely on the COA Report which was obtained by them sometime in 2010. [23]

Cross Examination

The witness admitted that all the figures in the Power Point presentation came from the COA Report. Thus, it is really not a computation since they merely copied it.[24] He said that the Alpha List were given to them after the filing of the case.[25] He testified that they received a separate Reply from the accused to the PAN and FAN but they did not reply to the said letters.[26]

Re-Direct Examination

The witness explained that they cannot make a Reply to the Formal Letter of Demand since they still need a certification from the District Office that the said documents were authentic. Likewise, his group did not reply to the protest letter of the accused to the PAN and FAN since he has not seen the Counter-Affidavit and the protest letters of the accused that have been forwarded to the Department of Justice.[27]

[16] TSN dated October 8, 2012, pp. 14-15.
[17] TSN dated October 8, 2012, pp. 18-20.
[18] TSN dated October 8, 2012, pp. 25-26.
[19] TSN dated October 8, 2012, p. 26.
[20] TSN dated October 8, 2012, p. 38
[21] TSN dated October 8, 2012, pp. 31-32.
[22] TSN dated October 8, 2012, pp. 36-37.
[23] TSN dated October 8, 2012, p. 46
[24] TSN dated October 8, 2012, p.62.
[25] TSN dated October 8, 2012, p. 67.
[26] TSN dated October 22, 2012, pp. 15-16.
[27] TSN dated October 22, 2012, pp. 22-24.

Re-Cross Examination

Here, the witness admitted that, while the instant case is already pending, they are still in the process of completing their investigation. He, likewise, admitted that that the BIR lawyers were the ones who went through the Counter-Affidavit and the latter, likewise, made the Reply Affidavit which the witness signed.[28]

3. Mr. Othello V. Bautista

Direct Examination

Based on his Judicial Affidavit[29], he is presently designated as the Administrative Assistant II at the Systems Operations Divisions of the Information Systems Operations Service (ISOS) of the BIR. Accordingly, he will testify regarding the Certification issued by Assistant Commissioner (ACIR) Victoria V. Santos in response to the request of Atty. Roberto Baquiran, with respect to the registration details and income tax returns filed by the accused for taxable years 2006 to 2009.

He testified that, based on the Certifications, accused did not file his income tax returns with the BIR for the taxable years 2006 to 2009 and that he personally extracted the data or information from the database.

Cross Examination

When he was asked as to what was his participation in the issuance of the Certifications signed by ACIR Victoria Santos, he replied: "Sir when there is an instruction to prepare the Certification, we have to check the database of the BIR. The TIN number of the taxpayer can be extracted or viewed in the database so we look for it, sir." He also stated that he was only asked to search for the Income Tax Return of the accused.[30]

4. Mr. Florante R. Aninag

Direct Examination

In his Judicial Affidavit[31], the witness testified that he is presently assigned as the Revenue District Officer of RDO No. 43A, East Pasig. He

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[28] TSN dated October 22, 2012, pp. 24-26.
[29] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 595-599.
[30] TSN Dated November 19, 2012, pp. 13-15.
[31] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 586-594.

said that he would testify regarding the tax registration details and other pertinent tax information of the accused for taxable years 2007, 2008 and 2009. He testified that he executed two (2) Certifications upon the request of the then Chief of the National Investigation Division, Atty. Roberto A. Baquiran sometime in December 2010.[32] He explained the step-by-step procedure in his office when he is being requested to issue said certification. He stated that based on the ITS database, the accused is registered at Revenue District Office No. 43A, East Pasig, as One Time Taxpayer (ONETT), and the accused's address is 14/F Strata 100 EME Ave., San Antonio, Pasig City. He affirmed that based on the said Certifications, the accused failed to file his annual income tax returns for taxable years 2007, 2008 and 2009.

Cross Examination

When the Counsel of the accused asked the witness if he was not the one who prepared the said Certification, he answered, "Yes, sir."[33]

Re-Direct Examination

The witness explained that he based his Certification "x x x on the data given by the personnel concerned. Meaning the Section concerned with the request for Certification." And it is his duty to sign the Certification in this case.[34]

5. Mr. Ramon A. Javier

Direct Examination

In his Judicial Affidavit[35], he testified that he is designated as the Technical Assistant of MWSS-Regulatory Office. He said that he would testify on the amounts of salaries, allowances and other personnel benefits received by accused as former Chairman of the MWSS Board of Trustees for taxable years 2007 and 2008 and that he has certified correct a certain report on the said matter. He stated that the accused received total allowances and other personnel benefits in the amounts of P718,200.00 and 1,831,200.00 for taxable years 2007 and 2008, respectively. He testified that based on the Report, accused did not receive any basic salary from MWSS-Regulatory Office since he was not a regular employee of the same. Thus, the said office did not withhold

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[32] Corrected in the November 19, 2012 hearing, to wit:
"This is supposed to be the Assistant Commissioner of Enforcement Service Division Atty. James Roldan, Your Honor."
TSN Dated November 19, 2012, p. 19.
[33] TSN dated November 19, 2012, p. 24.
[34] TSN dated November 19, 2012, pp. 25-26.
[35] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 635-640.

tax from the said allowances and other personnel benefits of the accused. In certifying correct the said Report, he based his certification from the checks and disbursement vouchers issued to the accused for the said allowances and other personnel benefits as Chairman of the MWSS Board of Trustees. He said that said checks and disbursement vouchers were already in the custody of the COA.

Cross Examination

The witness testified that the Reports marked as Exhibits "O", "P", "O-1" and "P-1" were originally prepared by their Finance Officer and that they reviewed the said exhibits and compared them with the records in their office. He affirmed that his function was only to review and validate the figures in the Report but it is not part of his duty to determine how much income tax to withhold from those who receive payment from MWSS. He stated that all the payments in gross amount to the Board of Trustees were being forwarded to the Board Secretary. When the witness was asked regarding his basis in claiming that the accused was not a regular employee, he answered, "Because it was my understanding that the appointment or organic plantilla position of the regulatory office comprises only from the position of Chief Regulator and down to the lowest level." He added that they did not withhold any tax from the allowances and personnel benefits being received by the accused, as instructed by his several superiors.[36]

The witness admitted that his office did not retain the original copies of the vouchers that they gave to COA. They only retained the photocopy of the first page of the vouchers they paid.[37] The witness admitted that none of the checks enumerated in the cross examination was payable to the accused and that the payees were either Nilda Matchon or Maritess Victoria or Maria Teresa Makiling.[38]

When the witness was asked as to whether the bonuses, incentives and medical incentives being received by the accused were likewise given to all employees of the MWSS, he answered: "Yes, sir". But he clarified that the executive checkup is only for the officials (managers and up). He admitted that he does not handle the income of the members of the Board. When he was asked as to who is responsible in withholding the taxes in the case of Board of Trustees, he answered, he is not sure. He just presumed that there is a separate office for the members of the Board who handles and consolidates their income.[39]

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[36] TSN dated March 18, 2013, pp.13-16.
[37] TSN dated March 18, 2013, pp. 18-22.
[38] TSN dated April 15, 2013, pp. 17-18.
[39] TSN dated April 15, 2013, pp. 20-24.

Re-Direct Examination

The witness affirmatively answered that he is responsible for the tax matters of the regular and permanent employees of the MWSS. The witness also affirmatively answered that he has nothing to do with the members of the Board of Trustees of MWSS both for regulatory and corporate offices.[40] The witness explained that Ms. Nilda Machon was the disbursing officer then of the Regulatory Office. When he was asked as to why the checks "were paid to the order of, under her name", he answered, "The check is named under the name of the disbursement officer and later on the amount is distributed among the members of Board of Trustees."[41]

Re-Cross Examination

Here, when the witness was asked as how many percent of the documents that he presented in Court consists of the total number of documents that he submitted with the COA, he answered, "I think it is less than fifty percent (50%)".[42]

6. Shirley A. Calapatia

Direct Examination

In her Judicial Affidavit[43], the witness testified that she is presently the Assistant Revenue District Officer of Revenue District Office No. 39, South Quezon City of the BIR. She said that she was authorized by Revenue District Officer Clavelina S. Nacar to identify and testify regarding the Withholding Tax Returns (BIR Forms 1604CF and 1604E) together with the attached alpha list of payees, filed by MWSS for taxable years 2007 to 2009. She testified that the name of the accused is reflected in Schedule 4 of the BIR Form 1604E, pertaining to the alpha list of payees whose income was subjected to expanded withholding tax, filed by MWSS, for taxable years 2007-2009. According to her, the ATC Code beside the name of the accused indicates that the income payments made to accused for taxable years 2007-2009 were subjected to creditable expanded withholding tax. She explained that under BIR Form 2307, the ATC W1090 refers to payments for fees of directors who are not employees of the company and whose current year's gross income does not exceed P720,000.00. On the other hand, the ATC W1090 refers to payments for fees of directors who are not employees of the

[40] TSN dated April 15, 2013, pp. 25-26.
[41] TSN dated April 15, 2013, pp. 29-30.
[42] TSN dated April 15, 2013, pp. 33-34.
[43] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 604-610.

company and whose current year's gross income exceeds P720,000.00. The witness also described the step-by-step procedure in their office whenever she is being requested to issue a Certification on a particular fact such as the filing of the income tax returns.

Cross Examination

The witness admitted that her participation was only to gather those documents, respectively marked as Exhibits "BB", "DD", and "FF" and that she did not contact MWSS regarding said documents.[44]

7. Estrellito A. Polloso

Direct Examination

In his Judicial Affidavit[45], the witness testified that he is the Manager of Finance Department of MWSS-Corporate Office. He said that he remembered signing a report, prepared by his staff, regarding the Salaries, Allowances and Other Personnel Benefits Received by Principal Officers and Members of Governing Board for 2007. In the said report, the accused received representation allowances in the amount of P158,400.00; bonuses and incentives in the amount of P135,403.50; and other personnel benefits in the amount of P1,599,896.47 for taxable year 2007. Accordingly, the aggregate amount that the accused received was P1,893,700.07. He said that, as Department Manager, one of his functions is to sign all the reports prepared by his subordinates most especially the reports to be submitted to the COA. Accordingly, the report, prepared by his subordinate, was based on the documents submitted by the Administrative Services Department, particularly the Human Resource Division, who is responsible for the preparation of payroll and other documents relating to the salaries and wages and other forms of compensation. And, based on the records that he certified, the accused did not receive any basic salary from MWSS because he is not a regular employee of MWSS but a Chairman of the Board of Trustees for Corporate Office of the MWSS. Thus, no income tax was withheld on the salaries of the accused. He added that the payroll and other documents submitted by the Human Resource Division (the bases of the report prepared by his staff) were already under the custody of the COA.

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[44] TSN dated February 18, 2013, p. 22.
[45] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 726-732.

Cross Examination

The witness affirmed that it is not part of his duties and responsibilities to pay the payroll of the Corporate Officers of MWSS as well as the payroll of the members of the Board of Trustees. He admitted that the word "Ex-Officio" under their Charter is the Department of Public Highways, the Secretary of the Department of Public Highways as the Chairman of the Board of Trustees. When he was asked if the accused was the Department Secretary of the Department of Highways during the period of January 1 to December 31, 2007, he answered in the negative. The witness admitted that he is not sure if the accused was an appointee of the President.[46]

Re-Direct Examination

Here, the witness testified that that the document marked as "N-1" was submitted to the BIR in 2013.[47]

Re-Cross Examination

When the witness was asked if the BIR has communicated to him prior to April 10, 2013, he answered, "I cannot remember."[48]

8. Jocelyn M. Toledo

Direct Examination

In her Judicial Affidavit,[49] the witness testified that she is presently the Acting Manager of Controllership Division at MWSS-Corporate Office. She said that she certified correct a Report on Salaries Allowances and Other Personnel Benefits of the accused as former Chairman of the MWSS Board of Trustees for taxable years 2008 and 2009. Said Report was prepared by Mar John Mananghaya. She testified that the accused, being then the Chairman of the Board of Trustees for Corporate Office of MWSS, did not receive any basic salary from MWSS. He only received other type of income from MWSS. Based on the said Report, accused received P1,707,530.62 and P2,744,791.22 as total allowances and other personnel benefits for taxable years 2008 and 2009, respectively. When she was asked as to what documents did she base her certification, she answered: "My certification was based on initials reflected under my signature. Since the documents passed the scrutiny of those who initialled the documents, it means that complete

[46] TSN dated June 3, 2013, pp. 16-22.
[47] TSN dated June 3, 2013, p. 24.
[48] TSN dated June 3, 2013, pp. 24-25.
[49] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 740-745.

staff work was done, basis of which are records posted on file." She added that the Reports were based on disbursement vouchers and check duplicates which were submitted to the COA.

Cross Examination

The witness admitted that it is not part of her duties and responsibilities to prepare the payroll of the members of the Board of the MWSS and to withhold the taxes of the members of the Board. She defined Ex-Officio as those occupying another positions like being officers from the GOCC and counsel from DOF. When she was asked if the accused holds any other position for the period 2008 to 2009, she answered in the negative. [50]

Re-Direct Examination

Here, the witness testified that the accused as member of the Board of Trustees, was not a regular employee since he was not among the employees listed in the Plantilla of List of Personnel.[51]

Re-Cross Examination

The witness admitted that her basis in saying that the accused was not a regular employee was due to the fact the he was not in the plantilla. But, the witness was aware that the accused was a Presidential Appointee during the periods covered by the Report.[52]

9. Angela B. Bolos

Direct Examination

The witness is the Audit Team Leader of the Corporate Office at the MWSS. She was sent by her boss, Airen Yulde, the Supervisor of MWSS Corporate Office, to present the Report on Salaries and Allowances of the principal officers of the MWSS for taxable years 2007, 2008 and 2009. When Justice Castañeda asked the witness if those documents are original documents, the Asst. State Prosecutor answered that they are certified true copies. The witness testified that they do not have the original documents since they are transmitting said documents to the Central Office of the Commission on Audit. When she was asked as to what is her basis in certifying that they are certified true copies of

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[50] TSN dated June 3, 2013, pp. 31-32.
[51] TSN dated June 3, 2014, pp. 33-34.
[52] TSN dated June 3, 2014, p. 35.

the documents, she answered, "These are based on the received copies because the second copy is being returned to us, the Central Office, the original goes to them." When Justice Castañeda asked if they are xerox copies of the original, the witness answered that they are xerox copies of the receiving copies.[53]

When the witness was asked if she can recognize the signature above the printed name of Noberto Cabibihan, COA Auditor, on the third page of the Report on Salaries for the year 2007, she answered in the negative. She reasoned out that she was just appointed as A.T.L. in December 2010 and that the basis of her testimony was the verification.[54]

Upon inquiry of Justice Cotangco-Manalastas as to whether the signature of the witness appears in the document, the Assistant State Prosecutor Montera-Barot answered: "No Your Honor", it is a different person Your Honor but also a COA Auditor who affixes the signature who verified the document. x x x". The witness admitted that she is not the custodian of the foregoing documents but the corporate government sector of the Commission on Audit. However, she claimed that she is the custodian of the duplicate which is the receiving copy. When the witness was asked if she is familiar with the signature of Elizabeth C. Liberato, appearing in the 2009 Report, she answered, "No, maám." She likewise presented the ROSA of the Regulatory Office for 2007, 2008 and 2009.[55]

Cross Examination

When the witness was asked if she has nothing to do with the said reports, her answer was, "Yes sir". When she was likewise asked if she has nothing to do with the submission of the said reports, she answered, "For the respective periods."[56]

10. Virginia V. Octa

Direct Examination

The witness is presently the Department of Manager of the MWSS Regulatory Office. Based on the subpoena *duces tecum* and *ad testificandum*, she is required to bring the original and certified true copies of the Report on Salaries and Allowances of the Regulatory Office of the MWSS for 2007-2009. However, she claimed that she failed to

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[53] TSN dated July 8, 2013, pp. 9-11.
[54] TSN dated July 8, 2013, pp. 13-14.
[55] TSN dated July 8, 2013, pp. 16-20.
[56] TSN dated July 8, 2013, pp. 21-22.

bring the said documents since all the original documents that they prepared were all submitted to the COA and, thus, they cannot likewise certify a true copy. She also stated that she affixed her signatures in those documents just to make sure that the Report being required by the COA are submitted and recorded on time. She said that they are required by the COA pursuant to a COA Circular to submit the said Report before every end of the year.[57]

Cross Examination

The witness admitted that she did not prepare the foregoing report and that when she note a report, she does not even go to the supporting documents. She also did not compute anything at all about the figures appearing on the said report. She also testified that the only purpose of the said report is only for compliance with the COA Circular. When she was asked if the Board of Trustees were aware of the said report, she answered in the negative.[58]

Re-Direct Examination

When the witness was asked if it is her function to prepare the report marked as Exhibit "Q" and "Q-1" (Report on the Salaries, Allowances and Other Personnel Benefits Received by Principal Officers and Members of the Governing Board for the Period January 1 to December 31, 2009 MWSS-Regulatory Office), she answered, "No ma'am." Accordingly, the function belongs to the clerical staff and accountant of the Finance Division. She said that she only affixed her signature to note that the report is completed and submitted to the COA as required by the COA. When she was asked if she knows Mr. Benedict Sarmiento, whose name appears in Exhibit "Q", she answered that he is the Chief Accountant and he sees to it that the Report that he is submitting is correct. So he affixed his signature as to the correctness and accuracy of the report.[59]

Re-Cross Examination

The witness admitted that Mr. Sarmiento is under her Department. She also admitted that she is not an accountant. She also assumed that what Mr. Sarmiento did is correct since the latter signed the same.[60]

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[57] TSN dated July 8, 2013, pp. 23-25; pp. 29-30.
[58] TSN dated August 5, 2013, pp. 5-8.
[59] TSN dated August 5, 2013, pp. 9-11.
[60] TSN dated August 5, 2013, pp. 11-12.

On September 2, 2013, the Formal Offer of Evidence (For The Prosecution)[61] was filed. On October 9, 2013, the Court admitted Exhibits **"B" to "B-5", "C", "C-1", "D" to "D-2", "G", "G-1", "G-3", "J" to "L", "N", "O", "P", "Q", "R" to "T-5", "AA", "AA-2" to "DD", "EE", "EE-2" to "EE-22", "FF" to "DDD-1"**, **"FFF"**, and **"FFF-1"**, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. However, the Court denied the following exhibits:

1. Exhibits **"A" to "A-2", "C-2", "D-3" to "F-1", "G-2", "H", "H-1", "M" to "M-1", "V" to "W", "AA-1", "EE-1"**, and **"EE-23" to "EE-25**, for failure of the prosecution to have the said exhibits identified;

2. Exhibits **"B-4-a" to "B-4-d"**, for failure of the prosecution to have the said exhibits identified and to submit the duly marked exhibits;

3. Exhibits **"N-1"**, **"O-1"**, **"P-1"**, **"Q-1"**, **"EEE"**, and **"EEE-1"**, for failure of the prosecution to submit the duly marked exhibits; and

4. Exhibits **"HHH" to "JJJ-1"**, for failure of the said documents to comply with Section 3(b) and (c), and Section 4 of the Judicial Affidavit Rule (A.M. No. 12-8-8-SC), in accordance with Section 10(c) of the same Rule.[62]

On October 11, 2013, the accused filed his Motion for Leave to File Demurrer to Evidence[63]. On October 25, 2013, the prosecution filed its Motion for Partial Reconsideration[64]. Both Motions of the parties were resolved by the Court in a Resolution dated February 12, 2014, in this wise:

1. The prosecution's Motion for Partial Reconsideration dated October 25, 2013 is hereby GRANTED. Accordingly, the Court admits Exhibits "C-2", "EEE", "EEE-1", and "HHH" to "JJJ-1", subject to the Court's final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

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[61] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 792-815.
[62] Resolution dated October 9, 2013, Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 1071-1072.
[63] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 1080-1082.
[64] Docket, CTA Criminal Case No. 0-253 (Vol. II), pp. 1084-1089.

2. The Motion for Leave to File Demurrer to Evidence filed by the Accused on October 14, 2013 is hereby GRANTED. Accused is hereby given a non-extendible period of ten (10) days from receipt hereof within which to file his Demurrer to Evidence.

On February 28, 2014, accused filed his Demurrer to Evidence[65]. On March 5, 2014, the prosecution filed its Motion for Reconsideration [of this Honorable Court's Resolution dated 12 February 2014]. On March 21, 2014, the prosecution filed its Opposition [To Accused's Demurrer to Evidence][66]. On April 14, 2014, the Court granted the prosecution's Motion for Reconsideration [of this Honorable Court's Resolution dated 12 February 2014] and admitted Exhibits "H", "H-1", "O-1", "P-1" and "Q-1".

Hence, this Demurrer to Evidence.

In his Demurrer to Evidence, the accused pointed out that the Commission on Audit Reports on Salaries, Allowances and Other Personnel Benefits (COA ROSA) Received by Principal Officers and Members of the Governing Board of MWSS for Regulatory Office (Exhibits "O", "P", and "Q") and for Corporate Office (Exhibits "R", "S", and "T") for 2007, 2008, and 2009, respectively, were just "Xerox copy of the receiving copy" and not certified true copies of the originals. Accused further argued that the same cannot, likewise, be considered as "duplicate originals" since they bear the stamp mark: "Certified Xerox/True Copy from COA File." Thus, accused is now of the considered view that said COA ROSA should be considered as UNVERIFIED documents and should not be given probative value by the Court.

On the other hand, the prosecution, in its Opposition [To Accused's Demurrer to Evidence], did not dispute the foregoing allegations of the accused and, in fact, admitted that, indeed, the foregoing documents were just "certified xerox/true copies" since the originals are already under the custody of the COA Central Office. However, it argues that the certified xerox/true copies of the said documents may be presented and attested by the proper custodian thereof, bearing the certification by him, his signature, and the seal of his office. The prosecution further argued that the presentation of the certified copy should be allowed pursuant to the principle of irremovability of public records under Section 26 of Rule 132 of the Rules on Evidence.

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[65] Docket, CTA Criminal Case No. 0-253 (Vol. III), pp. 1108-1126.
[66] Docket, CTA Criminal Case No. 0-253 (Vol. III), pp. 1141-1167.

This Court cannot discount the importance of the subject Commission on Audit Reports on Salaries, Allowances and Other Personnel Benefits since the figures appearing therein are the very basis of the alleged tax liabilities of the accused. In fact, Maria Lourdes Sante, Revenue Officer II of National Investigation Division of the BIR, testified that they just relied to the "Best Evidence Obtainable Rule" which is the COA ROSA Report in determining the tax obligations of the accused.[67] Even Ms. Sante's Group Supervisor, Revenue Officer III Gerry E. Saga, admitted that the computation of their tax assessments was merely copied from the said COA ROSA Reports. [68] Thus, it is imperative for this Court to determine whether or not the subject reports are certified true copies of the originals/duplicate copies of the originals.

Under the Revised Rules of Court, when the original of a document is a public record, it should not generally be removed from the office or place in which it is kept (Sec. 26, Rule 132). Thus, its contents may be proven using secondary evidence (Section 7, Rule 130) and, such evidence may pertain to the **certified true copy of the original document issued by the public officer in custody of the public records**, *viz:*

> "Sec. 7.*Evidence admissible when original document is a public record.* — When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a **certified copy issued by the public officer in custody thereof.** (2a)" (Emphasis supplied)

Where the law permits the use of a certified copy of public or official records, the proponent should authenticate it, that is, he must show that the paper offered by him is indeed the certified copy allowed by law. It must be ascertained that the paper to be offered is a custodian's certified copy-that he is in fact the lawful custodian of that class of document, and that his signature appearing therein is genuine.[69]

However, the Court, upon perusal of the records of the instant consolidated cases, finds that the prosecution has, indeed, only presented the certified xerox copies of the receiving copies of the said COA ROSA Reports at COA-MWSS and not the certified true copies of the originals which are already under the custody of the COA Central Office.[70] To bolster *Our* findings, the Court deems it proper to quote

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[67] TSN dated September 24, 2012, pp. 16-17.
[68] TSN dated October 8, 2012, p.62.
[69] Benjamin R. Caraig, Revised Rules of Evidence, p. 274.
[70] Admitted by the prosecution in its Opposition [To Accused's Demurrer to Evidence], p. 3 of 25.

pertinent portions of the testimonies of the prosecution's witnesses for ready reference:

<u>Estrellito A. Polloso</u>

ATTY. TANTUICO:
We acknowledge that this was previously marked as Exhibit "R" to "R-1" Your Honor.

ASST. STATE PROS. MONTERA-BAROT:
Your Honor the witness also received a copy of the subpoena *duces tecum* issued by this Honorable Court. I believe that document is now in his possession. So may we ask the witness to present that document with respect to the Certified True Copies in which were directed to be produced in relation to this case.

WITNESS:
A **This is the Certified True Copy of the document which I was directed to produce because Your Honor the original copy of this Report is now under the custody of the Commission on Audit.**

ASST. STATE PROS. MONTERA-BAROT:
On that note Your Honor, the prosecution moves for the remarking from the provisional document, that the marking be transferred to the certified true copy.

JUSTICE CASTAÑEDA:
That is just a certified Xerox copy.

ASST. STATE PROS. MONTERA-BAROT:
Your Honors we will be presenting the original for the comparison only because there would be a witness from the Commission of Audit.

JUSTICE CASTAÑEDA:
In the meantime, that is provisional.

ASST. STATE PROS. MONTERA-BAROT:
Your Honors we will be presenting this as our evidence already. This will be marked as our permanent document.

JUSTICE CASTAÑEDA:
Yes but that is only a Xerox copy, you have not presented the original for comparison yet.

ASST. STATE PROS. MONTERA-BAROT:
We will be asking the..*(interrupted)*

JUSTICE CASTAÑEDA:
At that time we will remove the provisional marking if you will present the original for comparison.

ASST. STATE PROS. MONTERA-BAROT:
I submit Your Honor.

JUSTICE CASTAÑEDA:
The documents were in the possession of the COA, right?

ASST. STATE PROS. MONTERA-BAROT:
Yes Your Honor. We will not be submitting those original documents so we will be asking the Honorable Court to set for another day for commissioner's hearing for the comparison Your Honor, just to save time.

JUSTICE CASTAÑEDA:
Yes and that will be the time that we will remove the provisional marking.

ASST. STATE PROS. MONTERA-BAROT:
Your Honor I move for the transfer of the marking Your Honor, because what was marked during the preliminary conference is just a Xerox copy Your Honor, there was no indication that there it was a certified true copy Your Honor. So move for the transfer of the marking.

JUSTICE CASTAÑEDA:
All right, transfer the marking.

ASST. STATE PROS. MONTERA-BAROT:
Exhibit "R".

JUSTICE CASTAÑEDA:
Provisional until you present the original because he is testifying that the custody is not with him but with the Commission on Audit."[71]

Ms. Angela B. Bolos

" A I was advised to present the requested documents.

Q Based on what?

A Based here, that I should present the ROSA, Report on Salaries and Allowances of the principal office of the MWSS.

Q For what years?

A 2007, 2008 and 2009.

Q From what office, Madam Witness?

A From MWSS Corporate Office.

[71] TSN dated June 3, 2013, pp. 9-12.

Q Can we have the documents, Ms. Witness?

ASST. STATE PROS MONTERA-BAROT:
Your Honors the witness is presenting the document Report on Salaries and Allowances received by the principal officers of the governing Board of MWSS. This is for the Corporate Office for the year 2007, 2008 and 2009.

JUSTICE CASTAÑEDA, JR.:
Are those the original documents?

ASST. STATE PROS. MONTERA-BAROT:
These are Certified True copies Your Honor.

Q Madam Witness, did you bring the original copies of this documents?

WITNESS:
A **We do not have the original documents because we are transmitting it to the Central office of Commission on Audit.**

Q So what is the basis of your office in certifying that it is the Certified True Copies of the documents?

A **These are based on the received copies because the second copy is being returned to us, the Central office, the original goes to them**.

JUSTICE CASTAÑEDA, JR.:
Q Are those Xerox copies of the original?

WITNESS:
A **Xerox copy of the receiving copy**."[72]

x x x x

JUSTICE CASTAÑEDA, JR.:
Q **Are you the custodian of these documents?**

WITNESS:
A **Custodian now is the corporate government corporate sector of the Commission on Audit.**

Q So not you?

A No, but the duplicate only.

JUSTICE COTANGCO-MANALASTAS:
Q You are the custodian of the duplicate?

WITNESS:

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[72] TSN dated July 8, 2013, pp. 10-11.

A The duplicate is in our office.

JUSTICE COTANGCO-MANALASTAS:
Q The receiving copy?

WITNESS:
A Yes the receiving copy."[73]

x x x x

ASST. STATE PROS. MONTERA-BAROT:
Q For the year 2009, Madam Witness...*(interrupted)*

x x x x

ASST. STATE PROS. MONTERA-BAROT:
Q For the year 2009, for the Corporate office of MWSS, there also appears a signature on the 5th page of the document also the one with the name Elizabeth Liberato. Again Ms. Witness kindly please tell the Honorable Court the significance of the signature on top of the name Elizabeth Liberato.

A As I have said earlier, if you sign the verification, you were able to verify the data against the records.

Q Madam Witness, are you familiar with the signature of Elizabeth C. Liberato?

A No, ma'am.

JUSTICE CASTAÑEDA, JR.:
All right.
Q Where are the originals of these documents?

WITNESS:
A The original documents on the Report or we call it ROSA, these are submitted to the government corporate sector of the Commission on Audit.

Q That is the office that has the original?

A Yes, Your Honor.

JUSTICE CASTAÑEDA, JR.:
All right.

ASST. STATE PROS. MONTERA-BAROT:
Q Madam Witness what are the other documents that you bring before this Court?

WITNESS:
A The ROSA of the Regulatory Office for 2007, 2008 and 2009.

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[73] TSN dated July 8, 2013, pp. 16-17.

ASST. STATE PROS. MONTERA-BAROT:
Your Honor may we request that these documents previously marked as Exhibit "O", "P" and "Q" be transferred to this document Your Honor. The Reports on Salaries, Allowances and other personnel benefits for 2007, 2008 and 2009.

JUSTICE CASTAÑEDA, JR.:
Mark them.

ASST. STATE PROS. MONTERA-BAROT:
Your Honors the documents just marked are all Certified True Copies from the Commission on Audit.[74]

Virginia V. Octa

Q Can I have that subpoena Madam Witness. Based on this subpoena Madam Witness you are required to bring the report, the original and certified true copies of the Report on Salaries and Allowances of the Regulatory Office of MWSS for the year 2007, 2008 and 2009. Did you bring these documents, Madam Witness?

A **No ma'am because all the original documents that we prepared were all submitted to the Commission on Audit.**

Q What are the documents that you bring today?

A **I did not bring ma'am because since we do not have the original of the documents, we cannot certify a true copy.**[75] (Emphases supplied)

Moreover, apart from the fact that the said COA ROSA Reports were not certified or issued by the officers having legal custody of the original records (Officers at COA's Central Office), they cannot, likewise, be considered as duplicate originals of the said reports.

For one, there is no certification that the subject COA ROSA Reports are duplicate copies of the originals. Second, the prosecution failed to demonstrate the practice of keeping on file the duplicate originals of the said Reports in the COA's office at MWSS. And third, the prosecution's witness, Ms. Angela Bolos, the Audit Team Leader at the MWSS Corporate Office, is incompetent to testify that the subject COA ROSA Reports covering taxable years 2007 to 2009 are duplicate copies of the originals since she was just appointed as Audit Team Leader at the MWSS Corporate Office in December 2010.[76] This also explains why

[74] TSN dated July 8, 2013, pp. 18-21.
[75] TSN dated July 8, 2013, pp. 24-25.
[76] TSN dated July 8, 2013, p. 13.

she was not even familiar with some of the signatures appearing in the said documents, i.e., Noberto Cabibihan[77] and Elizabeth C. Liberato[78]. Pertinent portions of her testimony are hereby quoted for ready reference:

"JUSTICE CASTAÑEDA, JR.:
Ok. Transfer the marking.

ASST. STATE PROS. MONTERA-BAROT:
Q **Madam Witness, on the third page of the Report on Salaries for the year 2007, there is a signature of Norberto D. Cabibihan, also a COA Auditor, do you recognize this signature Madam Witness?**

WITNESS:
A **No, ma'am.**

Q But what is the significance of this verification, this signature on top of the name Norberto Cabibihan in this document, Madam Witness?

A Once this is signed, the data is verified against the record.

Q Ms. Witness in the same manner...*(interrupted)*

JUSTICE CASTAÑEDA, JR.:
Q You do not know the signature of the person?

A **I was just appointed as A.T.L. in December 2010.**

Q So what is the basis of your testimony when you do not know?

A The verification. There appears a signature.

ASST. STATE PROS. MONTERA-BAROT:
There is a signature on top of the name Norberto Capinpin the one who verified the document Your Honor.

ATTY. TANTUICO:
Your Honors if she was only there in 2011 I do not think she is competent to testify on these documents.

ASST. STATE PROS. MONTERA-BAROT:
I am asking Your Honor the significance.

ATTY. TANTUICO:
She does not know the signature so she is not competent.

JUSTICE COTANGCO-MANALASTAS:
Q The person who signed the document, was he still there?

[77] TSN dated July 8, 2013, pp. 13-14
[78] TSN dated July 8, 2013, p. 20.

WITNESS:
A He is no longer in the MWSS.

Q So you wouldn't know of his signature?

A **I am not familiar with his signature, Your Honor.**

ATTY. TANTUICO:
With that Your Honor I think the witness is incompetent. I mean, these reports were prepared when she was not there, the person who signed is no longer there. I do not think she should be testifying in this case.

ASST. STATE PROS. MONTERA-BAROT:
Your Honor the Commissioner is not the one who prepared the document, it is the MWSS. What I am asking for the witness to answer is that, what is the significance of the signature above the name of the COA Auditor appearing on the third page of this document. The significance.

JUSTICE COTANGCO-MANALASTAS:
Is there a signature of her appearing in that document?

ASST. STATE PROS. MONTERA-BAROT:
There appears a signature on top of the name Your Honor.

JUSTICE COTANGCO-MANALASTAS:
Is her signature appear on that document?

ASST. STATE PROS. MONTERA-BAROT:
Yes Your Honor.

JUSTICE COTANGCO-MANALASTAS:
Why don't you just ask her to identify her signature?

ATTY. TANTUICO:
Her Honor is asking if the signature of the witness appears on the document.

ASST. STATE PROS. MONTERA-BAROT:
I did not ask if that is her signature.

JUSTICE COTANGCO-MANALASTAS:
That is what I am asking. If her signature appears in the document.

ASST. STATE PROS. MONTERA-BAROT:
No Your Honor, it is a different person Your Honor but also a COA Auditor who affixes the signature who verified the document.
Now what I am asking the witness Your Honor is that, what is the significance of this signature on the third of the document.

JUSTICE CASTAÑEDA, JR.:
Q Are you the custodian of these documents?

WITNESS:
A **Custodian now is the corporate government corporate sector of the Commission on Audit.**

Q So not you?

A No, but the duplicate only.

JUSTICE COTANGCO-MANALASTAS:
Q You are the custodian of the duplicate?

WITNESS:
A The duplicate is in our office.

JUSTICE COTANGCO-MANALASTAS:
Q The receiving copy?

WITNESS:
A Yes the receiving copy.

x x x x

CROSS-EXAMINATION OF PROSECUTION WITNESS
MS. ANGELA B. BOLOS
BY ATTY. KENNY H. TANTUICO

ATTY. TANTUICO:
Q **Madam Witness, you have nothing to do with these reports, correct?**

WITNESS:
A **Yes sir.**

Q **You also have nothing to do with the submission of these Reports, correct?**

A **For the respective periods.**"[79] (Emphases supplied)

Thus, having determined that the subject COA ROSA Reports are mere photocopies of the receiving copies and not certified true copies of the originals issued by the legal custodians thereof, the Court cannot, therefore, give probative value to the said pieces of documentary evidence as ruled by the Supreme Court in the case of *Republic of the Philippines vs. El Gobierno de las Islas Filipinas (G.R. No. 142284, June 8, 2005)*, where it held:

"Significantly, only a certain Geodetic Engineer certified that the copy of the decision attached to the petition was a true copy of the same. It was not established that the Geodetic Engineer is the

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[79] TSN dated July 8, 2013, pp. 13-17; pp. 21-22.

> public officer who is in custody thereof. Section 7, Rule 130, Revised Rules on Evidence provides:
>
> > SEC. 7. *Evidence admissible when original document is a public record.* – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by certified copy issued by the public officer in custody thereof. (2a)
>
> Thus, **in the absence of proof that the Geodetic Engineer is a public officer in custody thereof, such piece of evidence has no probative value.**" (Emphasis supplied)

The foregoing doctrine was again emphasized by the High Tribunal in the case of *People of the Philippines vs. The Honorable Juanito C. Catañeda, Jr., Honorable Caesar A. Casanova, Honorable Cielito N. Mindaro-Grulla, as Associate Justices of the Special Second Division, Court of Tax Appeals; and Myrna M. Garcia and Custodio Mendoza Vestidas, Jr.* (G.R. No. 208290, December 11, 2013), to wit:

> **"According to the CTA, 'no proof whatsoever was presented by the prosecution showing that the certified true copies of the public documents offered in evidence against both accused were in fact issued by the legal custodians.' It cited Section 26, Rule 132 of the Revised Rules of Court, which provides that 'when the original of a document is a public record, it should not generally be removed from the office or place in which it is kept.' As stated in Section 7, Rule 130, 10 its contents may be proven using secondary evidence and such evidence may pertain to the certified true copy of the original document issued by the public officer in custody thereof. Hence, the CTA wrote that the certified true copies of the public documents offered in evidence should have been presented in court.**
>
> x x x x
>
> **The Court agrees with the disposition of the CTA.**
>
> x x x x
>
> The display of patent violations of even the elementary rules leads the Court to suspect that the case against Garcia and Vestidas Jr. was doomed by design from the start. **The failure to present the certified true copies of documentary evidence;** x x x." (Emphases supplied)

Moreover, in proving the accuracy of the figures or amounts stated in the said COA ROSA Reports, the Court cannot, likewise, rely on the testimonies of the prosecution's witnesses since most of them just simply relied on the reports made by their subordinates, without actually checking if the contents thereof are correct or not. Quoted hereunder are the relevant portions of the judicial affidavits and testimonies of the prosecution's witnesses, to wit:

Judicial Affidavit of Estrellito Polloso (Manager of Finance Department of MWSS)

Q5: Mister witness, do you recall having prepared any report as to information relating to the amounts of salaries, allowances and other personnel benefits received by Oscar I. Garcia as former Chairman of the MWSS Board of Trustees for taxable year 2007?

A5: I remember having signed a Report prepared by one of my staff. May I explain further ma'am, that as the Department Manager, one of my functions is to sign all the reports prepared by my subordinates most especially the reports to be submitted to the Commission on Audit (COA).

x x x x

Q14: Considering also that Oscar Garcia received a total of P1,893,700.07as total allowances and other personnel benefits from MWSS-Corporate Office, how did you withhold the tax from the income received by Mr. Garcia, if you know:

A14: With all due respect ma'am, I cannot categorically give a correct answer because as I have mentioned earlier the function of preparing the payroll and the corresponding deductions was the responsibility of the Human Resource Division under the Administrative and General Services Department.

Q15: **In certifying correct the Report that you identified in this Honorable Court, what documents did you base your certification?**

A15: **In Certifying correct the Report, I just relied on the capability of my subordinate who prepared the said Report based on the documents submitted by the Human Resource Division.**[80]

Judicial Affidavit Jocelyn M. Toledo (Acting Manager of Controllership Division at MWSS Corporate Office)

Q16: In certifying correct the Report[81] that you identified in this Honorable Court, what documents did you base your certification?
A16: **My certification was based on initials reflected under my signature. Since the documents passed the scrutiny of those**

[80] Docket, CTA Crim. Case No. 0-253 (Vol. II), p. 728 and p. 730.
[81] The Report on Salaries, Allowances and Other Personnel Benefits covering the period January 1 to December 2008 and January 1 to December 2009 for MWSS-Corporate Office (Exhibits "S" to "S-4" and "T" to "T-4"), Docket, CTA Crim. Case No. 0-253 (Vol. II), p.743.

who initialled the documents, it means that complete staff work was done, basis of which are records posted on file.

Q17: Madam witness, what documents were made as basis of the Report which you certified correct, if you know.

A17: The report was based on disbursement vouchers and check duplicates.

It should be noted that Ms. Toledo did not present before the Court the foregoing disbursement vouchers and check duplicates to prove the veracity of the figures appearing in the report that she has certified.

Virginia Octa (Department Manager of the MWSS-Regulatory Office)

Cross Examination

Q **So when you note a report[82], you don't even go to the supporting documentation, is that correct?**

A **Correct.**

ATTY. TANTUICO:
Q **In other words, you did not compute anything at all about the figures which appear in this report?**

WITNESS:
A **Yes sir, I did not compute.**

Q **Is it also part of your duty as a Manager of the Administrative Department, to prepare the BIR forms of the withholding taxes of the recipients of the payments from the MWSS?**

A **Not my part, not my duty, sir.**

Q Not one of your duty?

A No, sir.[83]

Q So you are not aware of the BIR matters in connection with the amounts reflected in this report?

A **Yes as to the accuracy, I just noted the report.**[84] (Emphases supplied)

Re-Direct Examination

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[82] Exhibits "O", "P", "Q" as stated in her Cross Examination of Virginia Octa, TSN dated August 5, 2013, p. 5.
[83] TSN dated August 5, 2013, pp. 5-6.
[84] TSN dated August 5, 2013, pp. 5-6.

PROS. MONTERA-BAROT:
Q **Madam Witness, is it your function to prepare the report marked as Exhibit "Q", "Q-1"? May I refer to you this document?**

WITNESS:
A **No ma'am.**

PROS. MONTERA-BAROT:
Q Whose function is it, Madam Witness?

WITNESS:
A **It is the function of a clerical staff and the accountant.**

PROS. MONTERA-BAROT:
Q From what Division Madam Witness?

A **From the Finance Division.**

Q Why did you affix your signature in these documents marked as Exhibit "Q" and "Q-1"?

A **Just to note that the report is completed and submitted to the COA as required by the COA.**[85]

Re-Cross Examination

ATTY. TANTUICO:
Q Ms. Octa, Benedict Sarmiento is not under your Department, is that correct?

WITNESS:
A He is under because the Department is mixed of HR personnel, Finance and General Services.

JUSTICE CASTAÑEDA, JR.:
Q He is under your supervision, in effect?

WITNESS:
A Yes Your Honor.

ATTY. TANTUICO:
Q In short, you are his boss?

WITNESS:
A Yes, sir.

ATTY. TANTUICO:
Q And presumably because he is the Chief Corporate Accountant, he is an accountant but you are not?

A I am not, sir.

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[85] TSN dated August 5, 2013, pp. 8-9.

Q **So you are not in the position to determine whether or not. what Mr. Benedict Sarmiento did is correct? You are just assuming that it is correct because he signed it?**

A **At the same time I just took note of the requirement that the report is submitted to the COA.**

ATTY. TANTUICO:
Q Did you talk to Benedict Sarmiento about this report?

WITNESS:
A No, sir."[86] (Emphases supplied)

Moreover, while Mr. Ramon A. Javier (Technical Assistant of MWSS-Regulatory Office) admitted in his Judicial Affidavit that he was the one who prepared the Report on the Salaries, Allowances and Other Personnel Benefits for taxable years 2007 and 2008, he, nonetheless, failed to present the complete disbursement vouchers and check vouchers which were his bases in certifying correct the said Report, to wit:

**"RE-CROSS-EXAMINATION OF PROSECUTION WITNESS
MR. RAMON A. JAVIER
BY ATTY. KENNY H. TANTUICO**

ATTY. TANTUICO:
Q Mr. Witness just to make sure, the documents you have submitted, according to your certification, these are all you can find, so this is not the complete documents that you submitted to the Commission on Audit?

WITNESS:
A Yes, sir.

Q Would you have any idea of how many percent of the document this consists of, of the total number of documents you submitted to the COA?
WITNESS:
A I am not sure.

JUSTICE CASTAÑEDA:
Q Is it more than fifty percent (50%)?

WITNESS:
A **I think it is less than fifty percent (50%)."**(Emphasis supplied)

Considering that the subject Commission on Audit Reports on Salaries, Allowances and Other Personnel Benefits Received by Principal Officers and Members of the Governing Board of the MWSS, both for its

[86] TSN dated August 5, 2013, pp.11-13.

Regulatory and Corporate Offices, for taxable years 2007 to 2009 (the very bases of the assessments against the accused) are found to be mere certified xerox copies of the receiving copies and not certified true copies of the originals nor duplicate copies of the originals, and not issued by the legal custodians, and thus have no probative value and, the fact that the contents thereof have not been established by the prosecution with reasonable accuracy, the cases against the accused must therefore be dismissed for insufficiency of evidence.

WHEREFORE, premises considered, the Demurrer to Evidence is hereby **GRANTED**. Accordingly, the instant consolidated CTA Criminal Case Nos. 0-253, 0-254, 0-255, and 0-256 are hereby **DISMISSED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice