REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case Nos. O-549, O-550, O-551, and O-552**
	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
- versus -	***Members:***
	UY, *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.*
CARLO J. CAPARAS, (#202 M. Santos Street, Brgy. Ugong, Pasig City), Accused.	**Promulgated:** OCT 23 2019 9:54 a.m.

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RESOLUTION

For resolution is accused's **"MOTION FOR RECONSIDERATION (re: Resolution dated 19 February 2019)"**[1] filed on March 14, 2019, with plaintiff's **"COMMENT/OPPOSITION (To the Accused's Motion for Reconsideration filed on March 14, 2019)"**[2] filed on April 8, 2019. In the said Motion, petitioner prays for the reconsideration and setting aside of the Court's Resolution dated February 19, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, defendant's **Demurrer to Evidence** is **DENIED** for lack of merit.
>
> Accordingly, set this case for the initial presentation of defense evidence on March 27, 2019 at 1:30 p.m..
>
> **SO ORDERED.**"

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[1] Docket (Vol. 3), pp. 1182 to 1202.
[2] Docket (Vol. 3), pp. 1205 to 1213.

In his Motion, accused argues that:

1. The Court erred in ruling that the prosecution's witnesses are entitled to the presumption of regularity in the performance of official duties.

2. The Court erred in disregarding the glaring discrepancies in the prosecution's evidence relative to the tax identification number of the accused which the prosecution failed to resolve. Thus, serious doubt exists against the guilt of the accused which warrants his acquittal.

3. The constitutional right of accused Caparas to be presumed innocent was violated when the Court required him to present evidence to prove his innocence despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

4. The Court committed a serious error when it failed to state the facts and the law on which its ruling was based and when it failed to resolve key issues raised by the accused in its Demurrer to Evidence.

In its Comment/Opposition, plaintiff counters that:

1. No new substantial issue was raised in the accused's Motion for Reconsideration. In fact, it was a mere rehash of his arguments and defenses already decided and resolved by this Court.

2. The plaintiff is only required to establish a *prima facie* case against the accused.

3. An assessment is not a pre-requisite to the filing of a criminal complaint.

4. A criminal complaint is not instituted to demand payment, but to penalize the taxpayer for the violation of the Tax Code. Accordingly, an assessment is not necessary.

5. The accused failed to file income tax returns under TIN No. 157-741-560-000.

6. TIN No. 158-139-684, appearing in the assessment notices, is the TIN which accused himself claims as his own true TIN. The second TIN was introduced by the accused, and not the prosecution. As a matter of fact, he used it as a defense during the preliminary investigation of the case.

7. When a *prima facie* case is established by the prosecution, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed – the prosecution. It is the burden of evidence which shifts from party to party, depending upon the exigencies of the case in the course of trial.

THE COURT'S RULING

We find merit in accused's Motion.

The prosecution failed to establish a* prima facie *case against the accused.

In the case of *Republic of the Philippines vs. Alfredo R. De Borja,*[3] it was held that the question in a demurrer to evidence, is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case. Naturally, this entailed a calibration of evidence on record to determine whether the material allegations of the complaint were amply supported by evidence, to wit:

> "A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.
>
> In *Felipe v. MGM Motor Trading Corp.*,[4] wherein the propriety of the trial court's granting of a demurrer to evidence was the crux of the controversy, we held that a review of the dismissal of the complaint naturally entailed a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence. This being so, where the resolution of a question requires an examination of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations, the same involves a question of fact."

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[3] G.R. No. 187448, January 9, 2017.
[4] G.R. No. 191849, September 23, 2015.

In these consolidated cases, accused Carlo J. Caparas is charged before this court for his alleged failure to file and pay his annual income tax returns for taxable years 2006 to 2009, in violation 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 <u>required</u> 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 <u>failed</u> to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and

3. Accused <u>willfully</u> 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.

Upon a second hard look and careful review of the testimonial and documentary evidence offered by the plaintiff in this case, this Court finds that the prosecution was unable to establish a *prima facie* case against accused Caparas beyond reasonable doubt. On the aforementioned elements, the Court finds as follows:

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

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

> "**SEC. 51.** ***Individual Return***. –
>
> (A) Requirements. -
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) Every Filipino citizen residing in the Philippines;
>
> xxx xxx xxx
>
> (4) The income tax return shall be filed in duplicate by the following persons:
>
> (a) A resident citizen – on his income from all sources;
>
> xxx xxx xxx
>
> (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. In general, '*self-employment income*' consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner." *(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 derived from whatever source</u>, including, but not limited to, the following items:
>
> xxx xxx xxx
>
> (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, the conduct of trade or business, or the exercise of a profession.

In these consolidated cases, this Court gives credence to the Certification[5] dated October 19, 2010, stating that accused Caparas received payments from the Philippine Charity and Sweepstakes Office (PCSO), as well as the list of check and voucher disbursements for 2006 to 2009 from PCSO.[6]

The foregoing evidence submitted by the prosecution, appears to be sufficient to establish that accused Caparas received certain payments from PCSO for production of different television programs, and was duty bound to file annual income tax returns, pertaining to the said income.

2. <u>The prosecution failed to present sufficient proof that accused failed to file and pay for his annual Income Tax Returns.</u>

Having presented evidence that accused Caparas appears to have received income payments from PCSO, the prosecution is now duty bound to submit evidence proving that accused indeed failed to file and pay for his annual income tax returns for taxable years 2006 to 2009.

To determine whether accused Caparas filed the requisite annual Income Tax Returns, reference must first be made to Section 51 (B) of the NIRC of 1997, as amended, which identifies the place where the taxpayer should file his return, to wit:

> "**SEC. 51. *Individual Return*.** –
>
> 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 <u>legal residence or principal place of business</u> in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner." *(Underlining supplied.)*

Based on the foregoing provision, a taxpayer is mandated to file his tax return in his legal residence or principal place of business in

[5] Exhibit "P-55," Docket (Vol. II), p. 652.
[6] Exhibits "P-19," "P-20," "P-21," and "P-22," Docket (Vol. II), pp. 656 to 665.

the Philippines. In case where there is no legal residence or place of business, the taxpayer would be required to file the return with the Office of the Commissioner.

The significance of determining the venue where a taxpayer should file the requisite tax returns is crucial, as this would identify the specific evidence required of the prosecution to establish a negative statement/fact, *i.e.*, that the taxpayer did *not* file the required tax returns.

As applied to criminal cases regarding a taxpayer's failure to file a tax return, it means that it is not sufficient for the prosecution to submit evidence stating that the taxpayer failed to file tax returns in different jurisdictions.

On the contrary, the prosecution must establish the following facts, to wit:

(1) ***the venue where the taxpayer was mandated by law to file the tax return***, *i.e.*, the Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which the said taxpayer has his legal residence or principal place of business in the Philippines, or the Office of the Commissioner of Internal Revenue, in case the same taxpayer has no legal residence or place of business in the Philippines; and

(2) ***the taxpayer failed to file the tax return in the said venue***. In this case, however, the prosecution failed to clearly establish the said facts.

Records show that the prosecution presented, ***as proof of the venue where accused Caparas should have filed his return***, is the "BIR print-out of accused's registration with the BIR, showing his Tax Identification number as 157-741-560-000 and registered as a "Professional" engaged in dramatic arts, among others."[7] The said print-out states that the address of accused Caparas is at "**Boni Ave., Mandaluyong**."[8]

Meanwhile, a Certification from RDO 43 A, East Pasig City states that the "taxpayer was registered on October 29, 2001 at Revenue District Office No. 41, Mandaluyong City,"[9] while a Certification from RD No. 41, Mandalyong City states that the

[7] Formal Offer of Evidence, Docket (Vol. II), pp. 1089 to 1114, 1106.
[8] Exhibit "P-27," Docket (Vol. II), pp. 708.
[9] Exhibit "P-6-a," Docket (Vol. I), p. 193.

address listed is at "**503 Boni Ave., Mandaluyong City**."[10] The prosecution, however, also presented a Certification from RDO 43B states that accused Caparas was "domiciled at **290 M. Santos St., Ugong, Pasig City**."[11]

A perusal, however, of LOA-211-2010-00000238,[12] and the First Request for Presentation of Records,[13] shows that accused Caparas was listed as having TIN No. 157-741-560, with address at "**409 San Lorenzo St., Ayala Alabang, Muntinlupa City.**"

Finally, the Notice for Informal Conference,[14] Preliminary Assessment Notice,[15] and Formal Demand Letter,[16] lists accused Caparas with an address at **"No. 207 San Jose Street, Ayala Alabang Village, Muntinlupa City."**

On the other hand, ***as proof of failure of taxpayer-accused Caparas to file the tax return in the said venue,*** the prosecution presented various Certifications,[17] stating that Carlo J. Caparas did not file any Income Tax Return or Value Added Tax Returns for taxable years 2006 to 2009, to wit:

Exhibit	Revenue Region	TIN No.	Registered Address
"P-6-a"[18]	No. 7, RDO 43A, East Pasig City	157-741-560	Boni Ave., Mandaluyong City
"P-6-b"[19]	No. 7, RDO 43A, East Pasig City	157-741-560	
"P-6-c"[20]	No. 7, Revenue District 41 Mandaluyong City	157-741-560	503 Boni Ave., Mandaluyong City
"P-6-d"[21]	No. 7 RDO 43B West Pasig	158-139-684	290 M. Santos St., Ugong, Pasig City

From the foregoing evidence, it is apparent that not only was the prosecution unclear with regard to accused Caparas' TIN

[10] Exhibit "P-6-c," Docket (Vol. I), p. 202.
[11] Docket (Vol. I), pp. 203.
[12] Exhibit " P-11," Docket (Vol. II), pp. 648.
[13] Exhibit " P-12," Docket (Vol. II), pp. 649.
[14] Exhibit " P-13," Docket (Vol. II), pp. 650.
[15] Exhibit " P-24," Docket (Vol. II), pp. 668 to 674.
[16] Exhibit " P-25," Docket (Vol. II), pp. 675 to 689.
[17] Exhibits "P-6-a," "P-6-b," "P-6-c," and "P-6-d," Docket (Vol. I), pp. 193 to 194, and 202 to 203.
[18] Docket (Vol. I), pp. 193.
[19] Docket (Vol. I), pp. 194.
[20] Docket (Vol. I), pp. 202.
[21] Docket (Vol. I), pp. 203.

Number, it was also uncertain as to where accused Caparas should have filed the subject tax returns. The use of various TIN Numbers and addresses leads to the conclusion that even the BIR was unsure with regard to the legal residence or principal place of business of accused Caparas, having presented four (4) different addresses, under two (2) different TIN numbers to prove this matter.

This is highly unusual, considering that the BIR has access to all taxpayer records and registration, and should have been well-informed on the matter.

In any case, this Court notes that out of the four (4) stated addresses used by the BIR, it was only able to present Certifications indicating that there were no tax returns filed under two (2) addresses. Faced with the foregoing inconsistencies in the evidence presented by the BIR, this Court is unable to arrive at steadfast conclusions as to whether or not accused Caparas actually failed to file the requisite tax returns for the taxable years in question.

Without reliable and reasonable proof that accused Caparas indeed failed to file his tax returns for taxable years 2006 to 2009, this Court finds it difficult to sustain a finding that the prosecution was able to prove a *prima facie* case against accused Caparas.

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **GRANTED.** Accordingly, accused Carlo J. Caparas is hereby **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-549, O-550, O-551, and O-552, for failure of the prosecution to present sufficient evidence to establish the guilt of the accused beyond reasonable doubt.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice