REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JOSELITO B. YAP,
Accused.

CTA CRIM. CASE NO. O-668
For: Violation of Section 254 (Tax Evasion) of the National Internal Revenue Code of 1997, as amended.

x-------------------------------------x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JOSELITO B. YAP,
Accused.

CTA CRIM. CASE NO. O-669
For: Violation of Section 255 (Failure to File Return) of the National Internal Revenue Code of 1997, as amended.

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

Promulgated:

JUN 29 2020

10:00 a.m.

x - x

x - x

DECISION

BACORRO-VILLENA, J.:

At bar are two (2) consolidated criminal cases filed against accused, Joselito B. Yap (**accused**), for violations of Sections 254[1] and 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for taxable year (**TY**) 2012. Armed with authority to prosecute from the Bureau of Internal Revenue (**BIR**), the Department of Justice (**DOJ**), *via* its prosecutorial arm, filed the Informations below.

> ...
> **CTA Crim. Case No. O-669**
> [Violation of Section 255 of the NIRC as amended]
>
> That on or about April 2012, and thereafter, and within the jurisdiction of this Honorable Court, accused JOSELITO B. YAP, a registered taxpayer with the BIR under Tax Identification Number 903-452-270-000, with registered address at Prenza Highway, District 1, Cauayan City, Isabela, required by law to file income tax returns and to pay the corresponding income tax, did then and there unlawfully and feloniously attempt to evade and defeat payment of

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

2 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 the accurate information, who willfully fails to pay such tax, make such return, keep such 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 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.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

x - x

correct tax by then and there [under-declaring] his income in the amount of Eighty Four Million Seven Hundred Ninety Eight Thousand Two Hundred Ninety Five and 77/100 Pesos (₱84,798,295.77) resulting in deficiency income tax in the amount of Twenty Seven Million One Hundred Forty Thousand Four Hundred Fifty Four and 44/100 Pesos (₱27,140,454.44), exclusive of surcharges and interest, for taxable year 2011, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW. [3]

...

CTA Crim. Case No. O-669
[Violation of Section 255 of the NIRC as amended]

That on or about April 2012, and thereafter, and within the jurisdiction of this Honorable Court, accused JOSELITO B. YAP, a registered taxpayer with the BIR under Tax Identification Number 903-452-270-000, with registered address at Prenza Highway, District 1, Cauayan City, Isabela, required by law to file income tax returns and to pay the corresponding income tax, did then and there unlawfully and feloniously fail to supply correct and accurate information in his income tax return for taxable year 2011, by then and there reporting a taxable income of Five Hundred Eighty Five Thousand Seven Hundred Sixty One and 87/100 Pesos (₱585,761.87) whereas the true taxable income per audit amounted to Eighty Five Million Three Hundred Eighty Four Thousand Fifty Seven and 64/100 (₱85,384,057.64) resulting in deficiency tax in the amount of Twenty Seven Million One Hundred Forty Thousand Four Hundred Fifty Four and 44/100 Pesos (₱27,140,454.44), exclusive of surcharges and interest, for taxable year 2011, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.[4]

....

Both cases were raffled to the Court's First and Second Divisions, respectively.

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[3] Division Docket (CTA Crim. Case O-668), Volume I, p. 6.
[4] Division Docket (CTA Crim. Case O-669), p. 6.

x - x

On 15 March 2018[5], accused voluntarily appeared before the Second Division. With his submission to the Court's jurisdiction, accused's application for bail was granted in the amount of Twenty Thousand Pesos (₱20,000.00). Likewise, on 20 March 2018[6], accused voluntary appeared before the First Division and was also granted bail.

On 21 March 2018[7], accused filed simultaneously before both Divisions a Motion to Consolidate seeking to consolidate the two cases before the First Division. Absent any objection from complainant, the First Division granted the motion in a Resolution dated 12 April 2018.[8]

On 13 April 2018[9], accused also filed a Motion to Quash both Informations on the ground that the facts charged therein did not constitute an offense. In a Resolution dated 12 July 2018[10], the Court denied the Motion and held that the allegations in both Informations satisfy the elements of the crimes charged therein.

On 01 August 2018[11], accused was arraigned and he entered a plea of "not guilty" to both criminal charges. After the pre-trial that included several preliminary conferences, with exhibits pre-marked during a previous commissioner's hearing, the Court issued a Pre-Trial Order dated 04 September 2018.[12]

When trial ensued, plaintiff presented its witnesses, namely: (1) Revenue Officer Pamela F. Español (**RO Español**); (2) Revenue Officer Elizabeth C. Soriano (**RO Soriano**); and, (3) Revenue Officer Nelia A. Isuriña (**RO Isuriña**).

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5 Id., p. 90.
6 Division Docket (CTA Crim. Case O-668), Volume I, p. 89-90.
7 Division Docket (CTA Crim. Case O-669), pp. 91-92 and 94.
8 Division Docket (CTA Crim. Case O-668), Volume I, pp. 391-394.
9 Id., pp. 399-405.
10 Id., pp. 473-478.
11 Id., Volume II, pp. 701-703.
12 Id., pp. 689-696. During the pre-trial, plaintiff reiterated the contents of its Pre-Trial Brief filed on 27 July 2018. Despite accused's failure to file a PTB, the First Division allowed accused to stipulate the number and names of his witnesses and documents to be presented since the same had already been covered in the preliminary conferences.

EVIDENCE FOR THE PLAINTIFF

RO Soriano was first to take the witness stand for plaintiff. There, she testified that about the issuance of BIR Mission Order (**MO**) Nos. MSO2001-00030301, MSO2001-00030302, MSO2001-00030303, MSO2001-00030304, MSO2001-00030305 and MSO2001-00030307 against the accused. [13]

RO Soriano further testified on the conduct of her investigation against the accused pursuant to the said MOs. According to her, the investigation yielded an unexplained substantial increase in accused's assets between his original income tax return (**ITR**) and amended ITR for TY 2011[14]. The alleged discrepancy then led her to recommend the issuance of a Letter of Authority (**LOA**)[15] against the accused.

RO Español[16] assumed the witness stand next where she declared that she served personally the following documents to accused: (1) LOA-015-2014-00000015[17]; (2) Checklist of Requirements and the First Notice of Presentation of Records[18]; (3) Second & Final Notice of Presentation of Records[19]; (4) *Subpoena Duces Tecum* RR-018 (**SDT**)[20]; and, (5) Preliminary Assessment Notice (**PAN**)[21].

RO Español further testified that, due to accused's non-compliance with the SDT, their team formally investigated the accused which resulted in a finding that he had a total income tax (**IT**) deficiency amounting to Twenty-Seven Million Four Hundred Seventy Thousand Six Hundred Ninety-Five and Eighty-Nine centavos (₱27,470,695.89).

Lastly, RO Isuriña testified that she prepared the PAN and received accused's letter ("Legal Petition Notice") requesting for

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13 Judicial Affidavit, Exhibit "P-27", id., pp. 489-496.
14 Exhibits "P-9" and "P-11", id., Volume I, pp. 304 and 317, respectively.
15 Exhibit "P-13", p. 330.
16 Exhibit "P-28", id., Volume II, pp. 537-546.
17 Exhibit "P-13", supra at note 15.
18 Exhibit "P-13-a", id., p. 331.
19 Exhibit "P-14", id., p. 332.
20 Exhibit "P-15", id., p. 333.
21 Exhibit "P-22", id., pp. 370-371.

additional time to file a protest. However, the request was denied. She added that, due to accused's failure to respond to the PAN, she prepared a Formal Letter of Demand (**FLD**) which was forwarded to RDO 15.[22]

After the conclusion of the testimony of plaintiff's last witness, the Court ordered the filing of the Formal Offer of Evidence (**FOE**).[23]

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22 Exhibit "P-29", id., Volume II, pp. 639-643.

23 Id., pp. 744-756.

Exhibit No.	Document
"P-1"	Joint Complaint-Affidavit dated September 17, 2015 Annexes from "A to M".
"P-1-a"	Name and Signature of Pamela F. Español in the Joint Complaint-Affidavit dated September 17, 2015 with Annexes from "A to M".
"P-1-b"	Name and signature of Elizabeth C. Soriano in the Joint Complaint-Affidavit dated September 17, 2015 with Annexes from "A to M".
"P-1-c"	Computation of the Deficiency Income Tax Due for taxable year 2011, appearing on pages 6 to 7 of the Joint Complaint Affidavit dated September 14, 2015 with Annexes from "A to M".
"P-2"	Letter-Referral of Commissioner Kim S. Jacinto-Henares addressed to Hon. Leila S. De Lima, Secretary of Justice of the Department of Justice dated September 16, 2015.
"P-3"	BIR Certificate of Registration of Joselito B. Yap.
"P-4"	BIR Mission Order with number MSO2001-00030301 dated November 26, 2013.
"P-5"	BIR Mission Order with number MSO2001-00030302 dated November 26, 2013.
"P-6"	BIR Mission Order with number MSO2001-00030303 dated November 26, 2013.
"P-7"	BIR Mission Order with number MSO2001-0030304 dated November 26, 2013.
"P-8"	BIR Mission Order with number MSO2001-00030305 dated November 26, 2013.
"P-9"	Original Income Tax Return for Taxable Year 2011 of Joselito B. Yap.
"P-10"	Original Audited Financial Statement for Taxable Year 2011 of Joselito B. Yap.
"P-11"	Amended Income Tax Return for Taxable Year 2011 of Joselito B. Yap.
"P-12"	Amended Audited Financial Statement for Taxable Year 2011 of Joselito B. Yap.
"P-13"	Letter of Authority No. (LOA-015-2014-00000015) SN:eLA201100032050 dated June 10, 2014.
"P-13a"	Checklist of Requirements pursuant to Letter of Authority No. 015-2014-00000015 attached to the LOA.
"P-14"	Second and Final Notice addressed to Joselito B. Yap dated June 24, 2014 issued by Atty. Salvador V. R. Lasala.
"P-15"	*Subpoena Duces Tecum* with SDT No. RR3-018 addressed to Joselito B. Yap issued on July 17, 2014.
"P-16"	Joint Reply-Affidavit with attachments of Revenue Officers Pamela F. Español and Elizabeth C. Soriano filed before the Department of Justice on December 7, 2015.
"P-17"	Resolution on the complaint filed by the BIR against Joselito B. Yap issued by the Department of Justice dated January 9, 2018.
"P-22"	Preliminary Assessment Notice with Details of Discrepancy dated January 15, 2015.
"P-23"	Formal Letter of Demand with Details of Discrepancies dated June 22, 2015.

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In a Resolution dated 15 March 2019[24], the Court resolved to admit its exhibits.

Thereafter, accused filed a Motion for Leave of Court to File Demurrer to Evidence[25] which the Court granted.[26] Later, the Court resolved to deny accused's Demurrer to Evidence.[27] His subsequent Motion for Reconsideration was likewise denied.[28]

Trial then proceeded with the presentation of accused's testimony. He was his own lone witness.

EVIDENCE FOR THE ACCUSED

Controverting plaintiff's assertions, accused testified that he never personally received a copy of the LOA, PAN and FLD. He claimed that Dolly Cruz (**Cruz**), the one who allegedly received the mentioned documents on his behalf, was not his employee.[29]

Accused likewise insisted that it was his accountant Ma. Rita R. Asinas who prepared his Amended Audited Financial Statement (**AFS**) and she included therein non-current assets (acquired prior to TY 2011 which therefore led to the drastic increase in assets in his amended

"P-24"	BIR Mission Order with number MSO2001-00030307 dated November 26, 2013.
"P-25"	Letter dated June 9, 2014 with attached list issued by Revenue District Officer Atty. Salvador V.R. Lasala, requesting for issuance of Letter of Authority against Mr. Joselito B. Yap.
"P-26"	Investigation Report dated November 28, 2014 issued by Revenue Officer Pamela F. Español, requesting for issuance of Preliminary Assessment Notice.
"P-27"	Letter dated April 14, 2015 issued by Marina C. De Guzman-OIC Regional Director
"P-28"	Judicial Affidavit of Pamela F. Español.
"P-28-a"	Signature of Pamela F. Español.
"P-27"	Judicial Affidavit of Elizabeth C. Soriano.
"P-27-a"	Signature of Elizabeth C. Soriano.
"P-29"	Judicial Affidavit of Nelia A. Isuriña.
"P-29-a"	Signature of Nelia A. Isuriña.

24 Id., pp. 770-771.
25 Id., pp. 772-775.
26 See Resolution dated 07 May 2019, id., pp. 788-790.
27 See Resolution dated 27 June 2019, id., pp. 812-821.
28 See Resolution dated 14 August 2019, id., pp. 845-848.
29 Id., pp. 874-880.

x - x

ITR). According to accused, these assets were acquired not with his income but through numerous loans.

After accused's cross-examination, the defense rested its case and subsequently filed its FOE.[30] In a Resolution,[31] the Court admitted accused's exhibits.

Subsequently, both parties submitted their respective Memoranda.[32] On 24 February 2020[33], the Court submitted the case for decision.

ISSUE

Whether accused is criminally liable for violation of Sections 254 and 255 of the NIRC of 1997, as amended.

RULING OF THE COURT

A. CRIMINAL ASPECT

At the outset, it cannot be overemphasized that an assessment is not a pre-requisite to the filing of the criminal charges. In particular, Section 222(a) of the NIRC of 1997, as amended, states that, in case of a false or fraudulent return or failure to file a return, the tax may be assessed <u>or</u> a proceeding in court for the collection of such tax may be filed *without* assessment, at any time within ten (10) years after the discovery of the falsity fraud or omission. Moreover, it is basic in our jurisdiction that a criminal case can stand independent of an

30 Id., pp. 885-886.

Exhibit No.	Document
"A-1" to "A-series"	Counter Affidavit
"A-2" to "A-series"	Rejoinder Affidavit
"A-3"	Amended Audited Financial Statement for [TY] 2011 of Accused.

31 See Resolution dated 24 November 2020, id., pp. 927-928.
32 Id., pp. 929-951 (Plaintiff); id., pp. 953-963 (Accused).
33 Id., p. 964.

assessment hence the different procedures for each as elucidated in the case of *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[34] (**Pascor**) wherein the Supreme Court stated thus:

> ...
>
> Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because Section 222 of the NIRC specifically states that[,] in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment. Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal [c]omplaints for being premature, since his protest to the CTA has not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the [C]ommissioner of [I]nternal [R]evenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.
>
> Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.
>
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner

[34] G.R. No. 128315, 29 June 1999.

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> has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.[35]
>
> ...

Thus, accused's contention that his failure to receive copies of the LOA, PAN and FLD were violative of his right to due process holds no water. The present filing of criminal charges against the accused should not be confused with an assessment case. These consolidated cases are concerned with the following questions: (1) whether the accused committed the crimes he is accused of; and, (2) whether a cause exists to hold accused civilly liable for the crimes allegedly committed.

In response to the inquiries in the preceding paragraph, the Court discusses below.

Accused was charged with attempt to evade or defeat the payment of income tax for TY 2010, under Sections 254 and 255 of the NIRC of 1997, as amended. The provisions read:

> ...
>
> **Sec. 254.** *Attempt to Evade or Defeat Tax.* — Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.
>
> **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply 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

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35 Underscoring supplied.

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> 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.
>
> ...

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*,[36] the Supreme Court held that tax evasion connotes the integration of three (3) factors, namely:

> ...
>
> (1) The end to be achieved, that is, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;
>
> (2) An accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and,
>
> (3) a course of action or failure of action which is unlawful.
>
> ...

A perusal of accused's amended ITR and its attached financial statements shows that there was a substantial increase in his non-current assets from ₱3,600,000.00 to ₱87,182,656.00, as well as his current liabilities from ₱1,975,000.00 to ₱84,836,321.29. Plaintiff contends that accused specifically omitted such declarations and conveniently resorted to amendment upon BIR's discovery during the audit investigation.

In his defense, accused claims that the increase in non-current assets was not sourced from business revenues but through bank loans as reflected in the entries "Accounts Payable" and "Mortgage Payable" in his amended AFS. It is noteworthy that accused did not submit any evidence to substantiate such information therein with evidence of any loan. However, it is settled that the "conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution....the burden is on the prosecution to prove guilt beyond

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36 G.R. No. 147188, 14 September 2004.

x - x

reasonable doubt, not on the accused to prove his innocence."[37] This burden proceeds from the accused's presumption of innocence[38] enshrined under Article III, Section 14(2) of the Constitution which holds:

> ...
> Section 14.
>
> ...
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.[39]
>
> ...

The records reveal that accused's defense appears to have been bolstered with RO Española's admission during her cross-examination and further confirmed during the hearing (in answer to the Court's clarificatory questions)[40], to wit:

> ...
> WITNESS:
> During the course of the investigation, your Honors, with the Letter of Authority, the tax payer was not able to substantiate the increase of asset by the alleged increase in liability. It appeared that the assets acquired were financed through loans, your Honors, during the audit.
>
> JUSTICE CASTAÑEDA:
> They were financed by loans?

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[37] *Nilo Macayan, Jr. y Malana v. People*, G.R. No. 175842, 18 March 2015.
[38] See *People v. Zafra Maraorao y Macalalang*, G.R. No. 174369, 20 June 2012 and *People v. Paterno Lorenzo y Casas*, G.R. No. 184760, 23 April 2010.
[39] Underscoring supplied.
[40] On clarificatory questions of Second Division Chairman, Justice Juanito C. Castañeda, Jr..

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WITNESS:
From liabilities, your Honors.

JUSTICE CASTAÑEDA:
So, that was your findings, the assets were financed by loans.

WITNESS:
Yes, your Honors.[41]

...

A declaration or assertion not so substantiated is, at best, a self-serving statement or declaration which is inadmissible in evidence for being hearsay.[42] Thus, self-serving statements are deemed inadequate; competent proof must be adduced.[43] This principle is negated *if* the opposing party admits to the veracity of said statements thereby no longer requiring proof thereof in accordance with Rule 129, Section 4 of the Rules of Court which states:

> ...
> **Sec. 4.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
> ...

In fact, with the admission from the plaintiff, there was no need for accused to even controvert the same. It is unfortunate that plaintiff's own witness (RO Española) contradicted its own theory of prosecution. Quite interestingly, plaintiff did not also seek to contradict these admissions through a redirect examination. This being the case, it appears that the significant increase in assets of accused in his amended AFS and ITR has already been confirmed to be the result of loans and *not* undeclared income.

Incidentally, it is noted that, even if accused's non-current assets were omitted willfully in the *original* ITR, he already amended the

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41 TSN, 12 November 2018, pp. 12-13.
42 *Victory Liner, Inc. v. Court of Appeals and Viron Transportation Company*, G.R. No. 125034, 30 July 1998.
43 *Rodolfo Cornes, et al. v. Leal Realty Centrum Co., Inc., et al.*, G.R. No. 172146, 30 July 2008.

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same with the correct information *prior* to the filing of these criminal charges. While this may seem convenient, this belies the element of "willfulness" for the purpose of prosecution for the offense of tax evasion. For, if accused intended deliberately to evade the payment of the proper tax due him, he could have omitted from filing an amended return to correct his prior declarations especially if it would mean his exposure to an audit investigation by authorities.

More importantly, *the filing of amended tax returns is not disallowed* provided that a Letter of Authority (LOA) has not yet been served at the time of filing.[44] In the case at bar, the records reveal that accused filed its amended ITR on 14 February 2014 while Cruz allegedly received the LOA (dated 10 June 2014) on 13 June 2014.[45] Clearly, the amendment of accused's return is proper and valid.

Additionally, being a state of mind, "willful" for the purpose of tax evasion is equated with "evil" or "bad faith". "Willfulness" in tax crimes should be understood as a "voluntary, intentional violation of a known legal duty".[46]

In *Jose B. Aznar v. Court of Tax Appeals, et al.*[47], the Supreme Court explained the nature of fraud in tax evasion cases in the following wise:

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44 **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* **That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.** (Emphasis supplied)

45 TSN dated 21 November 2018, p. 13.

46 [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), citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982); see also *People v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009.

47 G.R. No. L-20569, 23 August 1974.

> ...
> The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud. It must be intentional wrongdoing with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most, create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.
> ...

In herein cases, the fact of fraud was not proven. On the contrary what was proven was accused's good faith in deeming it necessary to declare the increase in his assets and liabilities, thus, his amended tax returns. The element of fraud is therefore lacking. At most, only negligence may be imputed to accused for not ascertaining that he correctly filed his original tax return to include all the items needed to be declared for IT purposes. While it may likewise be argued that accused admitted the fact that he did not review the ITR and the financial statements, the Court is convinced that he relied heavily on the professional advice of his accountant and any error made was not deliberate. In any event, accused's act of amending his IT to reflect his true income and assets negates the alleged willfulness to evade or defeat the payment of the tax due. Plaintiff failed to adduce sufficient evidence to prove that accused intended to evade the payment of tax. In the same vein, the element of "willfulness" is absent for this Court to find him guilty of the offense charged.

It is settled that, in all criminal prosecutions, the plaintiff (prosecution) always bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, it is its duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime. It must therefore prove accused's participation in the commission of the x - x

offense. In doing all these, plaintiff must rely on the strength of its own evidence and not anchor its success on the weakness of accused's evidence.[48] The Supreme Court held rather emphatically:

> ...
> The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[49]
> ...
>
> The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. If there exist even one iota of doubt, this Court is 'under a long standing legal injunction to resolve the doubt in favor of ... accused. Any doubt shall be resolved in favor of the accused.[50]
> ...

B. CIVIL ASPECT

Due to the absence of any evidence of fraud or willfulness to evade payment of taxes on the part of accused, civil liability *ex delicto* likewise cannot be said to have attached to his actions. In *Emma P. Nuguid v. Clarita S. Nigdao*[51], the Supreme Court explained:

> ...
> ... [T]he basic principle in civil liability *ex delicto* is that every person criminally liable is also civilly liable, crime being one of the five sources of obligations under the Civil Code. A person acquitted of a criminal charge, however, is not necessarily civilly free because the

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48 *People v. Carlito Claro y Mahinay*, G.R. No. 199894, 05 April 2017.
49 *Anna Lerima Patula v. People*, G.R. No. 164457, 11 April 2012, 669 SCRA 135 as cited in *People v. Jayson Cruz y Tecson*, G.R. No. 194234, 18 June 2014.
50 *People v. Jayson Cruz y Tecson*, id.
51 G.R. No. 150785, 15 September 2006; Emphasis supplied.

x - x

> quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). **In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense.** If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. **It may only be that the facts proved did not constitute the offense charged.**
>
> ...

Given that plaintiff has failed to prove the existence of the crime of tax evasion to the point of *even admitting the fact of accused's defenses*, accused cannot be held civilly liable for the crime charged.

As a final note. The Court is not relieving accused of his tax obligations pursuant to any pending tax assessment. The discharge of accused from any civil liability in the present cases is only insofar as the charges of tax evasion are concerned. As previously explained in the case of *Pascor*, a criminal case for tax evasion and assessment are not to be confused with one another as they arise from different sources of obligations.

WHEREFORE, premises considered, accused **JOSELITO B. YAP** is **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-668 and O-669, respectively, for want of evidence that he committed the crimes charged and for reasonable doubt. Accordingly, the cash bail bonds of accused are hereby **DISCHARGED** and are to be **RELEASED** to him upon presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement as to civil liability *ex delicto*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

x - x

I CONCUR:

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice