REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

JOEL C. MENDEZ,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

C.T.A. EB CRIM. NO. 014
(C.T.A. CRIM. CASE NOS. O-013 & O-015)
For: Violation of Section 255 of R.A. No. 8424

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PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

JOEL C. MENDEZ,
Respondent.

C.T.A. EB CRIM. NO. 015
(C.T.A. CRIM. CASE NOS. O-013 & O-015)
For: Violation of Section 255 of R.A. No. 8424

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
DEC 11 2012 4:0 pm

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

THE CASES

The above-captioned cases are Petitions for Review filed by both Joel C. Mendez and the People of the Philippines from the Decision dated January 5, 2011 rendered by the Second Division of this Court in C.T.A. Crim. Case Nos. O-013 and O-015, both for Violation of *Section 255 of RA 8424, otherwise known as the Tax Reform Act of 1997,* the dispositive portion of which reads, as follows:

> "**WHEREFORE**, premises considered, judgment is hereby rendered:
>
> 1) In Criminal Case No. O-013, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended; and
>
> 2) In Criminal Case No. O-015, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the

amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

SO ORDERED."

THE FACTS

The facts of the case, as culled from the records, are as follows:

In two separate Amended Informations, both dated October 10, 2005, Joel C. Mendez (hereafter "petitioner Mendez") was charged with Violation of Section 255 of RA No. 8424, docketed as Crim. Case Nos. O-013 and O-015, the accusatory portions of which read, as follows:

CRIMINAL CASE NO. O-013

"That on or about the 15th day of April, 2003, at Quezon City, and within the jurisdiction of this Honorable Court, the above named accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center" , "Mendez Body and Face Salon and Spa" and "Mendez Body and Face Skin Clinic", with principal office at No. 31 Roces Avenue, Quezon City, and with several branches in Quezon City, Makati City, San Fernando and Dagupan City, did then and there, willfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau of Internal Revenue for the taxable year 2002, to the damage and prejudice of the Government in the estimated amount of P1,522,152.14, exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-015

"That on or about the 15th day of April, 2004, at Dagupan City, and within the jurisdiction of this Honorable Court, the above named-accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center", "Mendez Body and Face Salon and Spa" and "Mendez Body and Face Skin Clinic", with several branches in Quezon City, Makati City, San Fernando and Dagupan City, engaged in the business of cosmetic surgery and dermatology, willfully, unlawfully and feloniously did then and there, fail to supply correct and accurate information in his income tax return (ITR) for taxable year 2003 filed in the Revenue District of Calasiao, Pangasinan, by making it appear under oath that his income for taxable year 2003 was derived mainly from his branch in Dagupan City, and failing to declare his consolidated income from his other "Weigh Less Center", "Mendez Body and Face Salon and Spa" and "Mendez Body and Face Skin Clinic" branches, to the damage and prejudice of the Government in the estimated amount of P2,107,023.65, exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

When arraigned, petitioner Mendez pleaded "not guilty" to the crimes charged. Trial ensued.

THE PROSECUTION'S EVIDENCE

From the evidence adduced by the prosecution, particularly the testimony of twenty (20) witnesses, namely: Atty. Grace B. Cruz, Clavelina S. Nacar, Romeo E. Naranjo, Von M. Lentejas, Alex C. Perez, Atty. Mahinardo G. Mailig, Florante Aninag, Joseph Catapia, Perlita R. de Lara, Joseph Rodriguez, Arabelle O. Petilla, Emma C. Asusano, Jose Villareal, Elias S. Olasiman, Atty. Salvador C. Alcuino, Jr., Norilyn Caborda, Benjamin Molina, Jr., Menchie De Leon, Josefina Wan Remollo and Alexander D. Martinez, and documentary evidence presented, the following facts have been established:

Based on a confidential letter-complaint against petitioner Mendez for alleged non-issuance of official receipts for services rendered, Atty. Arnel SD. Guballa, Chief of National Investigation Division (NID), referred the case of taxpayer Dr. Joel C. Mendez to Atty. Grace Belarmino-Cruz, Revenue Officer, for appropriate action.

As a result of the initial investigation and recommendation, a Letter of Authority (LOA) No. 2001-00002438 dated November 8, 2004, was issued for the examination of book of accounts and other accounting records of petitioner Mendez for the period covering taxable years 2001, 2002 and 2003. Said LOA was received on November 10, 2004 by Cherry Perez, who allegedly represented herself as the authorized representative of petitioner Mendez. However, petitioner Mendez failed to submit the required documents; thus, a Second Letter-Notice and Final Request for presentation and/or production of the required documents were issued and received on November 24, 2004 and January 11, 2005, respectively, by petitioner Mendez's accountant and employee, Richard Bianan and Carla Yadao, respectively.

For failure of petitioner Mendez to present or produce the needed records and documents for examination despite several notices, the investigation proceeded through "Third Party Information" and "Best Evidence Obtainable Rule" allowed under *Section 5(B), in relation to Section 6(A) and (B) of the Tax Code of 1997.*

A verification of the business activities of petitioner Mendez disclosed that he had been operating as a single proprietor, doing business for taxable years 2001, 2002 and 2003 under the following trade names and addresses:

a) Mendez Body and Face Salon and Spa – 31-B A. Roces Avenue, Quezon City, registered with RDO No. 39-South Quezon City on May 6, 2002;

b) Mendez Body and Face Salon and Spa – B-3, 3F New Farmers Plaza, Cubao, Quezon City, registered with RDO No. 40-Cubao on October 24, 2003;

c) Mendez Body and Face Clinic – The Plaza Building, Greenbelt, Ayala Center, Makati City, registered with RDO No. 47- East Makati on April 30, 2004;

d) Weigh Less Center – SM City, San Fernando, Pampanga, registered with RDO No. 21-San Fernando, Pampanga on January 17, 2003; and

e) Mendez Weighless Center – 2/F CSI Mall, Lucao District, Dagupan City, registered with RDO No. 4-Calasiao, Pangasinan on May 16, 2003;

A perusal of the tax records of the BIR-ITS reveals that petitioner Mendez did not file his income tax returns for taxable years 2001 and 2002. This was corroborated by the testimony of the following Revenue District Officers who issued the corresponding certifications attesting to the failure of petitioner Mendez to file his income tax returns for taxable years 2001 and 2002, to wit:

1) Revenue District Officer Clavelina S. Nacar of RDO No. 39-South Quezon City – Certification dated February 22, 2005;

2) Revenue District Officer Romeo E. Naranjo of RDO No. 40-Cubao – Certification dated March 7, 2005;

3) Revenue District Officer Florante R. Aninag of RDO No. 21-San Fernando, Pampanga – Revenue Certification dated February 22, 2005.

During the investigation, it was further gathered that petitioner Mendez filed his ITR for taxable year 2003 with RDO No. 4-Calasiao, Pangasinan, for his Mendez Weigh Less Center located at CSI City Mall, Lucao District, Dagupan City despite the existence of his principal place of business at 31Roces Avenue, Quezon City.

As a result of the investigation and documentary evidence gathered, it was established that despite having practised his profession through the operation of his businesses, petitioner Mendez failed to file his income tax returns for taxable years 2001 and 2002, and under-declared the same in 2003.

To corroborate the testimony of Atty. Grace B. Cruz that petitioner Mendez made several investments as early as the year 1993, the prosecution presented the following documents attested to by Von Lentejas, a specialist at the Public Reference Unit of the SEC:

1. SEC Registration No. A1996-06633 of Weigh Less Center, Co., dated September 23, 1996, together with Articles of Partnership of Weigh Less Center Co., dated September 10, 1996;

2. SEC Registration No. AP093-001258 of Sabili Mendez Medical Services, Co., dated August 11, 1993, together with Articles of Partnership of Sabili Mendez Medical Services Co., dated August 3, 1993;

3. SEC Registration No. AP093-001258 of Mendez Medical Services Co., (formerly Sabili Mendez Medical Services Co.) dated August 8, 1996, together with Articles of Partnership of Mendez Medical Services Co., dated June 5, 1996;

4. SEC Registration No. AP096-00270 of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., dated February 6, 1996, together with Articles of Partnership of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., January 23, 1996;

5. SEC Registration No. AS094-000937 of Primehealth Card Services, Incorporated, dated February 1, 1994, together with Articles of Incorporation of Primehealth Card Services, Incorporated, dated January 13, 1994;

6. SEC Registration No. AP096-00909 of Oro Cup, Co., dated May 2, 1996, together with Articles of Partnership of Oro Cup, Co., dated April 22, 1996;

7. SEC Registration No. AP096-00184 of Oro Glass and Aluminum Supply Ltd. Co., dated January 26, 1996, together with Articles of Partnership of Oro Glass and Aluminum Supply Ltd. Co., dated January 25, 1996;

8. SEC Registration No. AP096-00294 of The Millenium Network Ltd. Co., dated February 7, 1996, together with Articles of Partnership of The Millenium Network Ltd. Co., dated February 5, 1996;

9. SEC Registration No. A200111706 of The Big and Small Art Co., dated August 8, 2001, together with Articles of

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Partnership of The Big and Small Art Co., dated May 24, 2001.

From the foregoing documents, the prosecution has established that petitioner Mendez has been engaged in the practice of his profession since 1996 through Weigh Less Center, Co., which was registered as a partnership on September 23, 1996, for the purpose of conducting medical program aimed at assisting clients to lose weight and to maintain ideal body weight afterwards.

On direct examination, Atty. Grace B. Cruz testified that when her team conducted an ocular inspection of the different branches of the Weigh Less Center, particularly, the Mendez Medical Group Weigh Less Center located at the Plaza Building, Greenbelt, Ayala Center, Makati City, they noticed a colored poster containing the phrase "Since 1996 Dr. Joel Mendez" (TSN, November 6, 2006, pp.6-11)

The investigating team also obtained from the Notarial Section of the Office of the Clerk of Court of the RTC of Quezon City a certified true copy of the Contract of Lease executed in Quezon City on July 12, 2001, between petitioner Mendez, as lessee, and Ma. Lita Gregorio, as lessor, showing that the lease pertained to the period of "August 15, 2001 to August 14, 2007", covering the whole building with a total floor area of 220 square meters, more or less, for a monthly rental of P27,000.00, for the purpose of establishing a health clinic and art gallery located at 31-G A. Roces Ave., Quezon City (Exhibits "N" to "N-4").

To prove that petitioner Mendez was earning income from taxable years 2001 to 2003 through operation of the different branches of his clinic, the prosecution presented certified true copies of the various advertisement placements made by petitioner Mendez in different major publications, specifically, those evidencing the 60 advertisements he placed with the Philippine Star from April 16 to October 31, 2001, 235 advertisements from January to December 18, 2002, and 96 advertisements from January 6 to December 17, 2003 (Exhibits "P" to "R-7") and records of newspaper clippings secured from Philippine Star Daily, Inc. (Exhibits "T","U", "V","W", "X" to "X-2", and "OOO"); Certifications issued by Emma C. Asusano, DTI-NCR Regional Caretaker, attesting to the fact that petitioner Mendez had businesses registered under his name as owner on May 26, 2003, July 31, 2003, and September 17, 2003 (Exhibits "ZZ", "DDD", and "HHH"); letter-reply issued by Arabelle O. Petilla, Chief of the Records Section of the Management Information Division of the LTO, listing the various vehicles purchased by petitioner Mendez in 1996, 2000, 2001 and 2003 (Exhibits "AA" to "AA-3"); original copy of the Letter issued by Atty. Salvador Alcuino, Jr., Senior Legal Counsel of the Legal Affairs Department of PAL, stating the summary of gross fares paid by petitioner Mendez for his travels abroad for taxable years 2001, 2002 and 2003 (Exhibits "Z" to "Z-10"); and Certification from the BOI showing that petitioner Mendez made forty-one (41) travels from 1995-2000, five (5) foreign travels in 2001, five (5) foreign travels in 2002 and twenty-two (22) foreign travels in 2003 (Exhibits "Y" to "Y-3").

Lastly, the prosecution presented the Computation of Expenditures under the Contract of Lease dated July 12, 2001, Computation of Expenditures under the Contract of Lease dated July 18, 2003, and Computation of Deficiency Tax for December 31, 2002 and December 31, 2003 (Exhibits "J^6" to "J^6-6"), for the purpose of proving the expenditures of petitioner Mendez, that he was earning income from his Weigh Less Center branches for the years 2002 and 2003, and the deficiency income tax liability of petitioner Mendez based on the best evidence obtainable.

On the basis of the data and documentary evidence gathered, the investigation team computed the estimated amount of income that petitioner Mendez earned for taxable years 2001, 2002 and 2003 based on his net worth and expenditures, to wit:

a) For taxable year 2001, Dr. Joel C. Mendez earned an income from various sources but did not report the same to the prejudice of the government in the estimated amount of Php1,089,439.08;

b) For taxable year 2002 , Dr. Joel C. Mendez earned an income from various sources but did not report the same to the prejudice of the government in the estimated amount of Php1,522,152.14; and

c) For taxable year 2003, evidence shows that Dr. Joel C. Mendez earned an income from different sources but failed to supply correct information and declared instead a net loss in the amount of Php38,893.91 to the prejudice of the government.

THE DEFENSE'S EVIDENCE

On the other hand, the defense presented petitioner Joel C. Mendez, Cherry Perez, and Lita Gregorio, and documentary evidence, marked as Exhibits "1" to "39-A", which tend to establish the following:

Cherry Perez, the first witness for the defense, in substance, testified that she is an accounting staff of Weigh Less Center, Roces Branch; that sometime in November of 2004, while she was still a medical staff in said branch, representatives from the BIR came to the center looking for petitioner Mendez; she received the Letter of Authority and the First Notice to Submit Documents from the BIR representatives, despite informing them that she has no authority to receive it, for and on behalf, of petitioner Mendez; and she gave said documents to their accountant, Richard Bianan, who was not able to forward said documents to petitioner Mendez.

Petitioner Dr. Joel C. Mendez, the second witness for the defense, substantially testified that he is a doctor by profession and runs several clinics under the banner, Mendez Medical Group; that Letter of Authority No. 00002438, dated November 8, 2004, was not personally served on him, and he was only made aware of its existence sometime in late February 2005 when the BIR personnel went to his office inquiring about said notice; that the BIR representatives went back to his clinic and brought with them a laptop computer; that the BIR representatives were

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met by Rose Zhamar Bejar, a staff of the clinic; that a certain Melvin Mondigo, a member of the investigating team, showed Rose Bejar a file copy of said LOA from his computer and gave her a copy and instructed her to comply and submit the complete requirements; that Richard Bianan, who was entrusted with all the documents and records in relation to his business, deliberately concealed these notices from him to avoid discovery that Mr. Bianan has not been remitting or paying to the BIR sums of money which petitioner Mendez has entrusted to him to pay his tax obligations; that Mr. Bianan has been charged with multiple counts of Estafa; that he issued checks and vouchers in the name of Mr. Bianan for the payment of taxes and other obligations; that sometime in February 2005, he caught Mr. Bianan stealing products and other valuables from the clinic and he filed a complaint for Qualified Theft; that it was during one of their jail visits that Mr. Bianan confessed to them about the non-payment of his tax obligations; that he leased the property located at A. Roces Avenue, Quezon City, on July 12, 2001, but started its operation on or about March 4, 2003; that the delay in operation was due to the fact that the property is a two-floor residential unit that is not designed at all as office space and had to be renovated; that due to limited funds, the construction took a while before it was finished; that the idea of putting up clinics came up in 1996, but due to financial problems and because his focus then was art, the clinics materialized only after several years; that the vehicles purchased in 2001 to 2003 were obtained through bank loans; that the newspaper advertisements were intended to generate public awareness in the business; and while he did attend to some celebrities, he did not charge them any fee.

Ma. Lita Gregorio, the third witness for the defense, substantially testified that she is the owner and lessor of the 2-storey commercial building with an area of 220 square meters, located at 31-G, A. Roces Avenue, Quezon City; that she entered into a six-year contract of lease with petitioner Mendez with a monthly rental of P25,000.00; that it was on August 15, 2001, that petitioner Mendez actually occupied the subject property and started to gradually introduce major improvements; that it was not until the latter part of the year 2002 that the renovation was completed; and she corroborated petitioner Mendez's testimony that the operation of the health clinic and art gallery was suspended due to lack of building permit.

THE SECOND DIVISION'S RULING

In its Decision, dated January 5, 2011, the Second Division gave credence to the testimonial and documentary evidence adduced by the prosecution and found petitioner Mendez guilty beyond reasonable doubt of Violation of Section 255 of the NIRC of 1997, as amended, in both C.T.A. Crim. Case Nos. O-013 and O-015.

Not satisfied, petitioner Mendez filed his "Motion for Reconsideration" and the prosecution filed its "Motion for Partial Reconsideration", which were both denied by the Second Division in its Resolution dated May 27, 2011.

Hence, petitioner Mendez filed this instant Petition for Review, docketed as C.T.A. EB Crim. No. 014, assigning the following:

ASSIGNMENT OF ERRORS

I

WHETHER OR NOT THE COURT OF TAX APPEALS SECOND DIVISION GRAVELY ERRED IN FINDING THAT THE ACCUSED IS BARRED BY ESTOPPEL IN

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RAISING THE DEFENSE OF LACK OF JURISDICTION FOR THE FIRST TIME ON APPEAL.

II

WHETHER OR NOT THE COURT OF TAX APPEALS SECOND DIVISION GRAVELY ERRED IN HOLDING THAT ASSESSMENT IS NOT NECESSARY TO A CRIMINAL PROSECUTION FOR TAX EVASION DESPITE THE ENACTMENT OF REPUBLIC ACT NO. 9282 OTHERWISE KNOW AS "THE EXPANDED JURISDICTION OF THE COURT OF TAX APPEALS".

III

WHETHER OR NOT THE COURT OF TAX APPEALS SECOND DIVISION STERNLY ERRED IN RULING THAT THE ISSUANCE OF SUBPOENA DUCES TECUM IS NOT A CONDITION PRECEDENT IN RESORTING TO THE BEST EVIDENCE OBTAINABLE AND FILING THE INSTANT CASE AGAINST THE ACCUSED.

IV

WHETHER OR NOT THE COURT OF TAX APPEALS SECOND DIVISION SERIOUSLY ERRED IN FINDING THAT ACCUSED IS GUILTY BEYOND REASONABLE DOUBT FOR TAX EVASION IN VIOLATION OF SECTIONS 253 AND 255 OF THE NATIONAL INTERNAL REVENUE CODE.

On the other hand, the prosecution filed the Petition for Review, docketed as C.T.A. EB Crim. No. 015, assigning the following:

ASSIGMENT OF ERRORS

I

THE SECOND DIVISION OF THE HONORABLE CTA ERRED IN RULING THAT AN ASSESSMENT IS NECESSARY TO IMPOSE THE CIVIL LIABILITIES PRAYED FOR BY PETITIONER.

II

THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE COMPUTATION MADE BY THE DULY AUTHORIZED REVENUE OFFICERS IS NOT AN AMOUNT FINALLY DETERMINED BY THE COMMISSIONER OF INTERNAL REVENUE.

On July 04, 2011, the Court *En Banc* consolidated C.T.A. EB Crim. No. 015 with C.T.A. EB Crim. No. 014, the case bearing the lower docket number.

As regards C.T.A. EB Crim. No. 014, without necessarily giving due course to the Petition for Review; on July 21, 2011, the Court ordered the prosecution to file its comment, not a motion to dismiss, within ten (10) days from notice.

As regards C.T.A. EB Crim. No. 015, without necessarily giving due course to the Petition for Review; on July 21, 2011, the Court ordered petitioner Mendez to file his comment, not a motion to dismiss, within ten (10) days from notice.

On August 08, 2011, petitioner Mendez filed a "Motion for Extension of Time to File Comment", which was granted in a Resolution dated August 15, 2011.

On August 22, 2011, petitioner Mendez filed his "Comment" to the prosecution's Petition for Review, in C.T.A. EB Crim. No. 015.

On September 22, 2011, the prosecution filed a "Manifestation with Motion" alleging that it has not yet received a copy of the Petition for Review filed in C.T.A. EB Crim. No. 014 by petitioner Mendez.

On December 01, 2011, the Court *En Banc* ordered petitioner Mendez to submit the proof of service to the prosecution of the Petition for Review filed in C.T.A. EB Crim. No. 014.

On December 26, 2011, in compliance with the Resolution dated December 1, 2011, petitioner Mendez submitted Registry Receipts Nos. 11139 and 11140.

On January 20, 2012, without the prosecution's comment to the Petition for Review in C.T.A. EB Crim. No. 014, and without the prosecution's reply to accused Joel C. Mendez's Comment to the Petition for Review in C.T.A. EB Crim. No. 015, the Court En Banc ordered both parties to file their simultaneous memoranda, within 30 days from notice; after which, both petitions shall be deemed submitted for decision.

On February 29, 2012 and March 1, 2012, the prosecution and petitioner Mendez, respectively, filed a "Motion for Extension of Time to File Memorandum", which was granted in a Resolution dated March 05, 2012.

On March 19, 2012, petitioner Mendez filed a "Manifestation in lieu of Memorandum" stating that he is adopting the issues and arguments stated in his Petition for Review in C.T.A. EB Crim. No. 014, as well as his Comment(to Prosecution's Petition for Review) filed in C.T.A. EB Crim. No. 015, as his Memorandum.

On March 21, 2012, the prosecution filed its Memorandum.

On April 16, 2012, the case was deemed submitted for decision.

THE COURT *EN BANC'S* RULING

Both petitions are without merit.

After a careful review of the evidence on record, the Court *En Banc* finds no valid or compelling reason to reverse the decision of the Second Division of this Court.

C.T.A. EB CRIM. NO. 014
(Appeal of Dr. Mendez)

In the first assignment of errors, petitioner Mendez's contends that he should not be barred from raising the defense of lack of jurisdiction because he raised the same in his "Motion for Reconsideration".

We do not agree, as aptly held by the Second Division in its Resolution dated May 27, 2011, to wit:

> "Moreover, while it is true that jurisdiction may be raised at any time, 'this rule presupposes that estoppel has not supervened. Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. In this case, accused submitted himself to the jurisdiction of this Court by having participated in all stages of the proceedings without questioning its jurisdiction. It is only after an adverse decision has been rendered that the issue on jurisdiction was

> raised, thus, accused is estopped from assailing this Court's jurisdiction."

Moreover, the Second Division has jurisdiction over the subject matter of the instant case as the amount of deficiency taxes stated in the Information exceeds one (1) million pesos, pursuant to the well-settled rule that jurisdiction of a court over a criminal case is determined by the allegations in the Information or Complaint. Thus, we find no merit in petitioner Mendez's defense of lack of jurisdiction.

As to the second assigned error that an assessment is necessary to confer jurisdiction over the subject matter in a criminal case, the same is likewise devoid of merit.

Settled is the rule that an assessment is not necessary before a criminal prosecution. In *Soliven vs. Fastforms Philippines, Inc., G.R. No. 139031, October 18, 2004,* the Supreme Court ruled that *Section 222 of the Tax Code* provides that an assessment is not necessary before a criminal charge can be filed.

As regards the third assigned error that the issuance of *subpoena duces tecum* is a condition precedent in resorting to the best evidence obtainable and in filing the instant case against him, the same is likewise bereft of merit.

The issuance of *subpoena duces tecum* is not a condition precedent in resorting to the best evidence obtainable, as correctly ruled by the Second Division:

> "To issue a *subpoena duces tecum* for the accused is merely one of the powers which the Commissioner may exercise in assessing or ascertaining the proper tax on the best evidence obtainable. Hence, in the absence of a *subpoena duces tecum* to be issued for the taxpayer, the Commissioner may still resort to exercise any of the above-enumerated powers in determining the tax liability of the taxpayer whom he suspects to have declared an amount less than the said taxpayer's actual income."

Lastly, petitioner Mendez claims that his guilt has not been established beyond reasonable doubt. This contention is likewise untenable.

In both C.T.A. Crim. Case Nos. O-013 and O-015, petitioner Mendez was charged with Violation of *Section 255 of the NIRC of 1997, as amended*, which provides, as follows:

> "**SEC. 255**. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.- **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.
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> xxx xxx." (Emphasis supplied).

Section 255 of the NIRC of 1997, as amended, penalizes failure to perform in a timely manner, an obligation imposed by the NIRC of 1997, as amended, to wit:

1) To pay an estimated tax or taxes;

2) To make a return;

3) To keep any record; and

4) To supply information.

In C.T.A. Crim. Case No. O-013, petitioner Mendez is being charged with failure to make or file a return, while in C.T.A. Crim. Case No. O-015, petitioner Mendez is being charged with failure to supply correct and accurate information.

FAILURE TO MAKE OR FILE A RETURN
(C.T.A. Crim. Case No. O-013)

The elements of Violation of *Section 255 of the NIRC of 1997, as amended*, for failure to make or file a return, are, as follows:

1) The accused is a person required to make or file a return;

2) The accused failed to make or file the return at the time required by law; and

3) That failure to make or file the return was willful.

As proven by the prosecution, all of the aforementioned elements are present in this case.

First Requisite
PERSON REQUIRED TO MAKE OR FILE A RETURN

As regards the first element, the prosecution has established that petitioner Mendez is duty bound to make or file a return.

Section 51 of the NIRC of 1997, as amended, provides:

"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;

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(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."

Corollary thereto, *Section 74 of the same Code* provides:

"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

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> the Secretary of Finance, upon recommendation of the Commissioner."

A careful review of the evidence adduced by the prosecution reveals that petitioner Mendez is a resident Filipino citizen and is the owner/sole proprietor of "Mendez Body and Face Salon and Spa" located at No. 31-B A. Roces Avenue, Quezon City.

In addition, the prosecution presented testimonial and documentary evidence to prove that petitioner Mendez spent a large amount of money on advertisements, purchases of vehicles, rents, and foreign travels. Said amount used for such purchases and expenditures came from his income earned from the practice of his profession through the operation of his business in 2002.

Considering that the prosecution has clearly established that petitioner Mendez earned substantial income in the practice of his profession, petitioner Mendez, therefore, is required to make or file his annual income tax return, pursuant to the afore-quoted *Sections 51 and 74 of the NIRC of 1997, as amended.*

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<u>Second Requisite</u>
PETITIONER MENDEZ FAILED TO MAKE OR FILE THE RETURN AT THE TIME REQUIRED BY LAW

As regards the second element, the testimonial and documentary evidence adduced by the prosecution shows that petitioner Mendez failed to make or file his ITR for taxable year 2002.

Pursuant to *Section 51, subsections (B) and (C) (1), of the NIRC of 1997, as amended*, a person with legal residence or principal place of business in the Philippines shall file his return with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality. The return shall be filed on or before the 15th day of April of each year covering income for the preceding taxable year.

Pursuant to the above-provision, petitioner Mendez was supposed to register, file his ITR and pay the corresponding income taxes due with the authorized agent bank, Revenue District Office, Collection Agent or duly authorized Treasurer of the City, where he has his legal residence or principal place of business. However, upon thorough investigation, from the evidence adduced by the prosecution, petitioner Mendez has no record of filing of the required ITR for 2002, within the reglementary period, with any of the revenue district offices of the BIR.

The prosecution has established that petitioner Mendez's principal place of business is at No. 31-B A. Roces Avenue, Quezon City, for the year 2002; and therefore, he should have filed his ITR in Quezon City.

However, there is no record of filing by petitioner Mendez of the required ITR. In fact, a Certification dated February 22, 2005 was issued by Clavelina S. Nacar, Revenue District Officer of RDO No. 39-South Quezon City, attesting to the fact that petitioner Mendez has no record on file for the years 2001-2002.

For his defense, petitioner Mendez claims that although his business was registered on May 6, 2002, the same was still not operational; hence, there was no income to declare for the year 2002.

Upon a careful examination of the evidence on record, we cannot give credence to said defense, and thus, sustain the following findings of the Second Division:

> "The accused tried to establish the impossibility of operation of his Roces branch by attributing the non-operation to his building permit problem, which was corroborated by the testimony of the lessor Ms. Lita Gregorio. However, the statements made by Ms. Gregorio failed to show that the Roces branch was not in operation in the year

> 2002. What Ms. Gregorio merely said is that the operation was suspended, which could mean that the operation already started, only that it was suspended due to the accused's problem with building permit. Also, the testimony of the accused that there was operation in the Roces branch in 2004 despite problems with the said building permit and the on-going renovation of the building only supports the arguments presented by the prosecution of the possibility of operation in the year 2002."

From the foregoing facts, the Court is convinced that petitioner Mendez failed to make or file a return, within the period required by law.

<u>Third Requisite</u>
THE FAILURE TO MAKE OR FILE A RETURN WAS WILLFUL

As regards the third element of "willfulness", the prosecution has sufficiently proven beyond reasonable doubt that petitioner Mendez deliberately failed to make or file a return.

Willful in the tax crimes statutes means voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown *[Mertens (Law of Federal Income Taxation) Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116,85-1 USTC 9178 (ca7 1985), in which the Court, Citing U.S. v. Moore, 627 F2d 830 (CA 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns].*

An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse *(Black's Law Dictionary, 5th ed., p.1434).*

Petitioner Mendez claims that he did not earn any income during the taxable years 2001 and 2002; thus, there was no voluntary, intentional, deliberate, or malicious failure to file a return on his part.

Petitioner's contention cannot be sustained.

First, the prosecution has clearly established that under the law, petitioner Mendez is obliged to file his ITR for taxable year 2002 for the income he earned, as proprietor and in the practice of his profession.

Second, being a doctor and a businessman, petitioner ought to know and understand all the matters concerning his practice and business. This includes knowledge and awareness of his tax obligations, in connection with his business and exercise of profession. Petitioner Mendez should know how much are his tax dues, the details stated in his

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ITRs, where his ITRs are being filed, and other important facts regarding the filing of his ITRs; after all, these matters concern his finances.

Under *Section (3) (d) of Rule 131 of the Revised Rules of Court*, it is presumed that a person takes ordinary care of his concern.

Hence, the natural presumption is that petitioner knows what his tax obligations are under the law. As a businessman and doctor, he should have taken ordinary care of his tax duties and obligations. He knows that his ITR should be filed, and should have made sure that his ITR had been filed.

Thus, this Court finds that petitioner Mendez willfully failed to make and file a return for taxable year 2002, in violation of *Section 255 of the NIRC of 1997, as amended.* The Court En Banc, therefore, sustains the ruling of the Second Division finding petitioner Mendez guilty beyond reasonable doubt of failure to make and file a return for taxable year 2002.

FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION
(C.T.A. Crim. Case No. O-015)

The elements of Violation of *Section 255 of the NIRC of 1997, as amended*, for failure to supply correct and accurate information, are, as follows:

1) the accused is a person required to supply correct and accurate information;
2) the accused failed to supply correct and accurate information, at the time or times required by law or rules and regulations; and
3) that failure to supply correct and accurate information was willful.

As proven by the prosecution, all of the aforementioned elements are present in this case.

First Requisite
PERSON REQUIRED TO MAKE OR FILE A RETURN

As earlier discussed, the prosecution has clearly established that petitioner Mendez is required by law to file a return and to declare all his income from all sources.

<u>Second Requisite</u>
PETITIONER FAILED TO SUPPLY CORRECT AND ACCURATE INFORMATION AT THE TIME REQUIRED BY LAW

As regards the second element, *Section 51 (C) of the NIRC of 1997, as amended,* provides that an individual subject to income tax is required to make and file a declaration of income on or before April 15 of each year covering income for the preceding taxable year.

A careful examination of the documentary evidence presented by the prosecution shows that petitioner Mendez filed his ITR for taxable year 2003 with RDO No. 4-Calasiao, Pangasinan, for his Mendez Weigh Less Center located at CSI City Mall, Lucao District, Dagupan City.

It is not enough, however, that a taxpayer files his income tax return at the time required by law, but more importantly, *Section 255 of the NIRC of 1997, as amended,* provides that the information therein must be correct and accurate considering that it is the basis for the computation of one's annual income tax.

The prosecution presented testimonial and documentary evidence to prove that petitioner Mendez earned income not only from the

Dagupan Branch, but also from other branches registered with the BIR using the trade names "Weigh Less Center", "Mendez Body and Face Salon and Spa" and "Mendez Body and Face Skin Clinic, which petitioner Mendez failed to declare in 2003.

The prosecution also presented several lease contracts between petitioner Mendez named as lessee, and several lessors for 2003, namely: Ma. Lita Gregorio, for the Roces, QC branch; Plaza, Inc., for the Plaza Building, Greenbelt, Ayala Center, Makati branch; and SM Prime Holdings, Inc., for the SM City Pampanga branch and advertisement placements contracts with various newspapers. These contracts entail huge amount of expenses.

Thus, the prosecution was able to prove that petitioner Mendez earned substantial income in 2003, but petitioner Mendez's ITR shows a net loss incurred in 2003. Therefore, the Court finds that the prosecution has clearly established the presence of the second element.

<u>Third Requisite</u>
THE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION WAS WILLFUL

As regards the third element, after a careful review of the evidence on record, the Court finds that the prosecution was able to show proof beyond reasonable doubt that petitioner Mendez willfully failed to supply correct and accurate information in his 2003 ITR.

As aptly ruled by the Second Division:

> "Even conceding that the accused was made to believe by his then accountant, Mr. Bianan, that he was able to comply with his tax obligations, the same is not sufficient to prove that the failure of the accused to declare all his income is not willful. Under the circumstances, the accused, despite knowledge that he is earning from his other Weigh Less Center branches, failed to inquire as to his compliance with his tax obligations. The accused should have inquired if he was able to declare his income from his other branches considering that the only income declared in his income tax return for 2003 was for his income earned from the Dagupan branch. Such refusal or failure of the accused to verify his compliance with his tax obligation constitutes willful blindness on his part."

For all the foregoing, the Court *En Banc* finds that the prosecution has clearly established the above-prescribed elements for Violation of *Section 255 of the NIRC of 1997, as amended.*

C.T.A. EB CRIM. NO. 015
(Appeal of the People of the Philippines)

Petitioner People of the Philippines's contention that the Second Division erred in not awarding civil damages as the record shows that the computation was approved by the Commissioner, is devoid of merit.

Section 222 (a) of the NIRC of 1997, as amended, provides:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or 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: Provided, that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof."

Corollary thereto, Section 205 of the NIRC of 1997, as amended, provides:

> **SEC. 205. Remedies for the Collection of Delinquent Taxes.** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and
>
> (b) By civil or criminal action.

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Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon."

Pursuant to the above provisions, an assessment is not necessary to impose civil liabilities; however, the computation of the civil liabilities must be signed and approved by the Commissioner himself. In this case, a perusal of the computation (Exhibits "J^6" to "J^6-6") shows that it was done only by Revenue Officer Alexander Martinez, and not by the Commissioner, in violation of the above-quoted provisions. Hence, said computation cannot be used as basis for awarding civil damages.

As aptly ruled by the Second Division:

"To reiterate, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner as to the tax liability is necessary in order for the Court to rule on the civil liability. However, in this case, the prosecution presented no assessment or any computation made by the Commissioner which can be a proper basis of the grant of civil liabilities sought by the prosecution. Instead, what the prosecution

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> presented are estimates made only by a Revenue Officer. Without an assessment or any computation of an amount finally determined by the Commissioner, there can be no basis for ruling on the civil liability of the accused."

Finding no reversible error, the Court *En Banc* affirms the assailed Decision dated January 5, 2011of the Second Division.

WHEREFORE, premises considered, both Petitions for Review, docketed as C.T.A. EB Crim. Nos. 014 and 015, are hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision, dated January 5, 2011 and Resolution, dated May 27, 2011 of the Second Division are hereby **AFFIRMED** without pronouncement as to costs.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

I maintain my Dissenting Opinion in the Decision dated Jan. 5, 2011
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice