Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

GERARDO C. TEVES,
Accused.

CTA Crim. Case No. 0-299
For: Violation of Section 255, paragraph 1, of the National Internal Revenue Code, as amended.

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 16 2015
9:07 a.m.

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DECISION

CASANOVA, J.:

Accused Gerardo C. Teves is charged before this Court for violation of paragraph 1, Section 255 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, for willful failure to supply correct and accurate information in his Annual Income Tax Return (ITR) for taxable year 2009.

STATEMENT OF FACTS

On July 25, 2012, the prosecution filed an Information dated March 1, 2012 against accused Gerardo C. Teves, which reads as follows:

> "That on or about April 15, 2010 in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a single proprietor doing business under the trade name GT Trading's Rice Importation duly registered with the Bureau of Internal Revenue District Office

No. 033 and with Tax Identification Number 209-041-595-000 filed with said revenue district office BIR Form No. 1701, more commonly known as the Annual Income Tax Return, for the taxable year 2009, knowing fully well that he is required by the law and the rules and regulations to supply correct and correct information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to supply correct and correct information in said BIR Form No. 1701 by stating in paragraphs 29 and 30 thereof that the amount of his sales/receipts/revenues and cost of sales amounted only to Two Hundred Forty-One Thousand Eight Hundred Thirty Pesos (Php241,830.00) and Ninety-Seven Thousand One Hundred Two Pesos and Fifty Centavos (Php97,102.50), respectively when importation documents clearly show that he made purchases on various dates in 2009 in the total amount of Ninety-Eight Million Nine Hundred Eighty-Seven Thousand Seven Hundred Twenty Pesos and Ninety-Six Centavos (Php98,987,720.96), which willful failure to supply correct and accurate information resulted in the substantial under-declaration of sales and the payment of correct taxes.

CONTRARY TO LAW."

To briefly narrate the facts of the instant case, the records showed that a Warrant of Arrest[1] was issued against the accused on September 27, 2012. However, the same was recalled and set aside[2] after the accused voluntarily surrendered before this Court and posted the required cash bail for his provisional liberty on October 5, 2012. Upon arraignment[3] on April 17, 2013, accused entered a plea of "**Not Guilty**" to the crime charged.

In a Pre-Trial Order[4] dated June 17, 2013, the parties stipulated on the following facts and issues:

"A. stipulated Facts:

1. That this Honorable Court has jurisdiction over the case.
2. That accused Gerardo C. Teves is the same person named and charged in the Information subject of this case.

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[1] Docket (Vol. I), p. 208.
[2] Resolution dated October 5, 2012, Docket (Vol. I), p. 219.
[3] Docket (Vol. I), p. 301.
[4] Docket (Vol. II), pp. 339-347.

3. That in 2009, accused operated as a single proprietor and engaged in business under the trade name GT Trading.
4. That accused was issued Tax Identification Number 209-041-595-000.
5. That accused's registered business address is 3rd Floor, BF Condominium, Andres Soriano Avenue, Intramuros, Manila.
6. That on various dates in 2009, accused imported rice.
7. That accused filed his Annual Income Tax Return for taxable year 2009 on 15 April 2010.

B. Stipulated Issues

Legal Issue:

1. Whether or not Accused is liable for the offense charged in the Information."

Factual Issue:

1. Whether or not the government was prejudiced in the amount of P129,951,247.02 and P6,121,718.83, for income tax and VAT due, exclusive of penalties, surcharges and interest."

While the instant case was still on trial, the Bureau of Internal Revenue sent a Notice of Informal Conference[5] to the accused on July 31, 2013. By such reason, accused authorized[6] Atty. Eric C. Opriasa to attend the same. The BIR, thereafter, issued a Preliminary Assessment Notice[7] dated August 2, 2013, which was received by accused himself on August 28, 2013. Subsequently, the BIR issued a Formal Letter of Demand with Details of Discrepancies[8] dated October 17, 2013, which was, likewise, received by accused.

Trial ensued. The prosecution presented the testimonies of the following witnesses:

[5] Exhibit "SSSS" and Exhibit "6".
[6] Exhibit "7" and "7-1".
[7] Exhibit "TTTT" and "TTT-1".
[8] Exhibit "UUUU".

The EVIDENCE PRESENTED BY THE PROSECUTION

I. Marcial M. Padilla

The first witness for the prosecution, Mr. Marcial M. Padilla, declared by way of Judicial Affidavit[9], that he was a member of the group of examiners who conducted an investigation to determine the possible tax deficiency or liabilities of accused and/or GT Trading. In conducting their investigation, his group followed several procedures: (1) "profiling" of taxpayer, which refers to the accused's personal circumstances; (2) "third party verification"; (3) consolidation and evaluation of all data, information and documents that they gathered; and, (4) their findings and recommendations.

During the "profiling" stage, his group accessed the Bureau of Internal Revenue Integrated Tax System (database of the Bureau), which contains all relevant taxpayer's information. They learned from the said data that the accused is a registered taxpayer of Revenue District Office No. 33 (RDO No. 33), Intramuros-Ermita- Malate, with Tax Identification Number 209-041-595-000, issued on January 15, 2001; and, with address at 3rd Floor BF Condominium, Andres Soriano Ave., Intramuros, Manila.

He added that part of the profiling process was the issuance of Access Letters to various agencies and/or entities, particularly RDO No. 33, Bureau of Customs (BOC) and National Food Authority (NFA). Accordingly, the following documents were obtained from RDO No. 33: Certified True Copies of Income Tax Return (ITR), with attached Financial Statements, and VAT Returns filed by accused/GT Trading for taxable year 2009. They also secured from the NFA certified true copies of letters addressed to BOC Commissioner, Memorandum of undertaking (MOU), Certification of Official Importation (COI), Telefax, Tentative Statement of Account, with photocopies of other supporting documents such as Import Entry Declaration (IED), Bill of Lading (BL) and Certificate of Turn-Over (CTO), all pertaining to the business of herein accused/GT Trading.

And, based on the foregoing importation documents, his group found out that accused made several rice importations in the total amount of P98,987,720.96; that the Financial Statements accompanying the ITR will show that the business operations of accused/GT Trading yield a gross profit ratio of 40%; that the accused only declared the amount of P97,102.50 as his total amount of purchases in the said

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[9] Docket (Vol. I), pp. 361-370.

Financial Statements; and, that the computed undeclared sales when compared to what was declared in the financial statements resulted to an under-declaration of 128,297%.

Thereafter, his group sent a Memorandum to the Commissioner of Internal Revenue, recommending that the results of their preliminary investigation be immediately forwarded to the RATE-Legal Writing & Appearance Group (LWAG) for evaluation and preparation of the corresponding pleadings required for the filing of criminal case against the accused. The BIR, subsequently, issued a Letter of Authority on September 28, 2011, authorizing the examination of the books of accounts of the accused for taxable years 2008 and 2009. Then, the CIR issued a letter referral dated October 6, 2011 to the Secretary of Justice for the filing of criminal action against the accused. Afterwards, his group executed a Joint Complaint-Affidavit dated October 13, 2011.

On cross-examination, the witness admitted that the report was made on the basis of third party information and from the records available to their office[10]; that the assessment was based on the gross sales of the accused;[11] and, that he has no knowledge on whether the accused sold all the goods.[12] He added that while the accused may not report the sale, he should, however, at least report his purchases.[13]

II. Jessie M. Juangco

The second witness for the prosecution, Mr. Jessie M. Juangco, by way of Judicial Affidavit[14], stated that his group conducted the preliminary investigation on the possible tax violation of the accused. He discussed the procedural steps undertaken by his group in investigating accused's case. He stated that they sent access letters to the following: Mr. Danilo C. Mendoza, the Revenue District Officer of RDO No. 33, BOC and NFA. And, through said letters, his group was able to obtain the documents mentioned in the previous testimony of Revenue Officer III Marcial M. Padilla.

On cross-examination, the witness admitted that his group's findings were based on the documents coming from the BIR, BOC and NFA.[15] a

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[10] Transcript of the Stenographic Notes (TSN) dated July 29, 2013, p. 24.
[11] TSN dated July 29, 2013, p. 27.
[12] TSN dated July 29, 2013, p. 28.
[13] TSN dated July 29, 2013, pp. 28- 29.
[14] Exhibit "QQQQ".
[15] TSN dated July 29, 2013, p. 37.

III. Danilo C. Mendoza

The third witness for the prosecution, testified, by way of Judicial Affidavit[16], that he was the Revenue District Officer of RDO No. 33 from February 2009 until December 31, 2010. He said that he is familiar with the accused on the ground that he received a letter from the National Investigation Division requesting the tax returns filed by the accused for taxable years 2008 and 2009. Thus, he instructed the Chief of the Document Processing Section of RDO No. 33 to retrieve said returns. Accordingly, accused filed with RDO No. 33 his 2009 Annual ITR, together with the Financial Statements, and the latter's 1st, 3rd and 4th quarterly VAT returns for taxable year 2009.

IV. Ma. Gracia R. Bolutano

The fourth witness, Ms. Ma. Gracia R. Bolutano, testified, by way of Judicial Affidavit[17], that she is OIC-Chief of the Data Processing Section of RDO No. 33 from May 2, 2011 to present. She stated that, upon receipt of the access letter addressed to RDO Josephine S. Virtucio of Revenue District No. 33, she checked with the ITS if said taxpayer filed a return. Her staff was able to retrieve the 1st, 3rd and 4th 2009 quarterly VAT returns filed by accused. After verifying said documents, she photocopied and certified the same as certified true copies. Then, she forwarded said documents to the Revenue Officers from the National Investigation Division of the BIR.

V. Manuel Advincula

The presentation of the fifth witness for the prosecution was dispensed with upon stipulation of the parties that he was the one who certified the Annual Income Tax Return of accused; that he has no personal knowledge as to the alleged rice importations made by the accused in this case; and, that he has no personal knowledge whether the rice imported was actually and personally received by the accused nor sold by the latter.[18]

VI. Veneracion P. Prado

The sixth witness for the prosecution, Ms. Veneracion P. Prado, testified, by way of Judicial Affidavit[19], that she is the Intelligence Officer

[16] Exhibit ""RRRR".
[17] Exhibit "NNNNN".
[18] TSN dated October 21, 2013, pp. 4-5.
[19] Docket (Vol. II), pp. 442-452

II at the NID of the BIR. She said that they conducted an investigation on the books of accounts and other accounting records of accused, pursuant to a Letter of Authority No. LOA-211-2011-00000338 dated September 28, 2011. Then, they issued a Memorandum to the CIR, recommending the results of their preliminary investigation. The CIR, thereafter, issued a letter to the Secretary of Justice for the filing of criminal case against the accused. After the issuance of the said letter, they executed their Joint Complaint-Affidavit.

She manifested that, after filing their Joint Complaint-Affidavit, they continued the assessment procedures on the accused. They issued a Notice of Informal Conference dated July 26, 2013 to the latter. But due to accused's failure to appear on the said conference, they issued a Preliminary Assessment Notice (PAN), which was served to the accused on August 28, 2013. In the said PAN, accused was found liable for deficiency income tax and VAT in the respective amount of P438,465,823.56 and P16,755,572.63.

She explained how the deficiency income tax was computed. She said that using the 2009 ITR as basis, she added from the amount of net loss indicated therein the amount of total undeclared sales based on data derived from available documents from the BOC and documents presented by the accused. Meanwhile, the amount of undeclared sales was computed by considering the amount of the Beginning Inventory as reflected in the 2008 Financial Statements, particularly, the balance sheet of GT Trading. The purchases as indicated in the VAT Returns for taxable year of 2009 and the data obtained from the BOC regarding the NFA rice importations of the accused, plus the NFA service fee of 10,000,000, which was derived from the computation of P2.00/kg of rice. Total Goods Available for Sale was obtained through the above figures. Cost of Sales was divided from the cost ratio used in the ITR for taxable year 2009. She deducted the sales as per accused's 2009 ITR from the total sales as determined through data and documents mentioned earlier.

The deficiency VAT of P16,755,572.63 was computed by getting the total purchases declared per VAT returns filed by accused for taxable year 2009, which amounted to P25,213,303.06. The said amount was divided by the cost ratio of forty percent (40%), which would result to the amount of total VATable sales. Afterwards, the total VATable sales of P63,033,257.65 was multiplied by the applicable VAT rate of twelve percent (12%).

She also testified that the accused himself received the PAN. But since they did not receive any letter, correspondence or protest from the accused regarding the PAN, they recommended the issuance of the Final Assessment Notice or Formal Letter of Demand (FLD). Accordingly, the FLD was received by accused himself on October 29, 2013.

On cross-examination, the witness affirmed that she has no personal knowledge (i) as to whether or not the rice imported for the said taxable year 2009 were actually delivered and received by accused; and, (ii) as to whether or not the purported rice imported were actually sold.[20]

VII. Christopher T. Patdo

The witness, by way of Judicial Affidavit[21], declared that he is presently holding the position of Grains Operations Officer 1 at the Grains Marketing Operations-Foreign Operations Division of the NFA. His important functions consist of the Private Sector Financed (PSF) Rice Importers under Tax Expenditure Subsidy (TES); preparation of the required Memorandum of Undertaking (MOU), Certificate of Official Importation (COI) and Tentative Statement of Accounts; preparation of reply letters/fax/queries and accommodation of telephone inquiries on rice procedures and requirements; maintenance of file/copies of documents regarding rice imports; facilitation of the filing of the necessary custom entry on rice importation through the use of NFA-TES; and performance of such other related functions as may be assigned to him by his supervisors, pursuant to law and rules and regulations.

He testified that GT Trading is one of the private sector rice importers who was awarded to participate in the NFA's PSF rice importation using the NFA's Tax Expenditure Subsidy in the year 2009. Under the PSF, the NFA shall facilitate the necessary customs entry on said importation, through the use of the NFA-TES, and it is the authorized signatory on the Import Entry and Internal Revenue Declaration and other documents related to the release of the rice importation from the BOC. Accordingly, all documents relative to rice importation shall be in the name of the NFA for the account of the importer. The NFA shall facilitate the filing of the necessary Customs entry on said importation through the use of NFA-TES. The importer and their duly assigned license broker, on the other hand, shall submit to the NFA the following documents: Bill of Lading, Commercial Invoice, Certificate of Origin, Phytosanitary Certificate, Certificate of Weights, and Quantity and all import related documents, at least five (5) days

[20] TSN dated November 25, 2013, pp. 16-17.
[21] Docket (Vol. II), pp. 557-569.

before the arrival of the vessel/container at the BOC. The NFA shall then advice the BOC on the incoming shipment for the account of the importer, the assigned port, and the estimated time of arrival (ETA) of the vessel. The NFA shall issue to the importer a Certificate of Turn-Over once documentation has been completed and the rice shipment has already been approved for release by BOC.

He stated that out of the 5,000 metric tons of rice importation awarded to GT Trading, it imported 4,999.60 metric tons in its sixteen (16) shipments in 2009. He enumerated the vessels carrying rice importations consigned to NFA in behalf of GT Trading: (1) MV Ever Golden 452E; (2) MV Wan Hai 510; (3) MV Hansa Liberty 014; (4) MV Mol Attraction; (5) MV Olympian Racer 0914 (6) MV Bunga Raya Dua; (7) MV Vinashin Freighter (8) MV Warnow Porpoise (9) MV Sinar Banten; (10) MV Bago v. BG881S; (11) MV Magway; (12) MV Maersk Brooklyn 0909; (13) MV Aegean Express N041; (14) MV YM Earth 71N; (15) MV YM Immense 043B; and, (16) MV Kota Rukun.

To prove that that foregoing shipments carried rice importations consigned to NFA in behalf of GT Trading, he stated that the importer must furnish the NFA documents such as the Bill of Lading, Commercial Invoices, Certificate of Origin, Phytosanitary Certificate, Certificate of Weights and Quantity and all import related documents which should be submitted before the NFA could issue Certificates of Turn-Over in all its rice importations.

The witness explained the relevance of Certificate of Turn-Over. According to him, said document authorizes the importer/consignee to withdraw/receive the rice from the BOC with the understanding that the importation has been fully cleared by the BOC in the payment of all fees. It also indicates that the importer has settled/paid all port and unloading expenses including stevedoring, wharfage, arrastre, brokerage and other related expenses attached to the importation except payment of tariff. He also identified several Certificates of Turn-Over for each corresponding vessels/carriers carrying rice importations consigned to NFA in behalf of GT Trading.

To further prove the arrival of the vessel carrying the rice importations consigned to NFA in behalf of GT Trading, he presented and identified the following documents: the Memorandum of Undertaking for each vessel (marked as Exhibits "H", "N", "DD", "JJ", "X", "PP", "TT", "WW", "ZZ", "QQQ", "EEE", "S", "AAAA", "KKK", "WWW", and "GGGG"), the Certification of Official Importation (marked as Exhibits "I", "O", "EE", "KK", "Y", "QQ", "UU", "XX", "AAA", "RRR", "FFF", "T", "BBBB", "LLL", "XXX", and "HHHH"), the Letter addressed to the

Commissioner of BOC (marked as Exhibits "WWWW", "X", "CC", "II", "W", "OO", "ZZZZ", "AAAAA", "CCCCC", "PPP", "DDD", "R", "ZZZ", "JJJ", "VVV", and "FFFF"), and the Telefax Sheet from the NFA (marked as Exhibits "J", "XXXX", "FF", "LL", "Z", "RR", "YYYY", "BBBBB", "SSS", "GGG", "DDDDD", "CCCC", "MMM", "EEEEE", and "FFFFF").

After presenting its witnesses, the prosecution filed its Formal Offer of Evidence[22] on February 27, 2014, offering therein Exhibits "A" to "NNNNN-1". However, in a Resolution[23] dated August 14, 2014, only the following Exhibits were admitted by the Court:

Exhibit	Description
"A"	BIR-ITS printout of the registration details of GT Trading.
"B"	Access letter addressed to Revenue District Officer Danilo C. Mendoza of Revenue District Office (RDO) No. 33.
"E" to "E-4"	Annual Income Tax Return (ITR) and its required attachments such as Statement of Management's Responsibility and GT Trading Statement of Income and Balance Sheet, filed by Gerardo C. Teves for taxable year 2009.
"F" to "F-2"	Quarterly Value-Added Tax (VAT) Return (ITR) for the first, third and fourth quarters of 2009.
"JJJJ" to "JJJJ-7	Joint Complaint Affidavit of Revenue Officers Veneracion P. Prado, Jessie M. Juangco, Marcial M. Padilla and Alberto S. Enriquez, Jr. (consisting of 8 pages)
"MMMM"	National Investigation Division (NID) Memo Assignment No. RAB-2010-08-05-179 dated August 5, 2010.
"NNNN"	Letter of Authority No. LOA-211-2011-00000338 dated September 28, 2011 signed by CIR Kim S. Jacinto-Henares.
"OOOO"	Original Copy of Referral Letter of the Complaint Affidavit signed by Commissioner Kim S. Jacinto-Henares dated 6 October 2011 consisting of two pages.

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[22] Docket (Vol. II), pp. 656-681.
[23] Docket (Vol. II), pp. 806-807.

"PPPP" to "PPPP-1"	Judicial Affidavit of Marcial M. Padilla consisting of nine (9) pages and the signature of Marcial M. Padilla found on page 8 ("PPPP-1").
"QQQQ"	Judicial Affidavit of Jessie M. Juangco consisting of seven (7) pages and the signature of Jessie M. Juangco found on page 7 ("QQQQ-1)
"RRRR"	Judicial Affidavit of Danilo C. Mendoza consisting of six (6) pages and the signature of Danilo C. Mendoza found on page 5 ("RRRR-1")
"SSSS"	Notice of Informal Conference dated July 26, 2013 addressed to Gerardo C. Teves including attachment consisting of three (3) pages.
"TTTT"	Preliminary Assessment Notice (PAN) issued by James H. Roldan, Assistant Commissioner, Enforcement Service against Gerardo C. Teves with its attached details of discrepancies consisting of five (5) pages.
"UUUU"	Formal Letter of Demand (FLD) dated October 17, 2013 issued to Gerardo C. Teves consisting of two (2) pages, with its attached annexes consisting of five (5) pages.
"VVVV"	Judicial Affidavit of Veneracion P. Prado consisting of eleven (11) pages and the signature of Veneracion P. Prado found on page 10 ("VVVV-1").
"WWWW"	Letter of the NFA dated May 25, 2009 addressed to the BOC relating to the arrival of the vessel MV EVER GOLDEN 452E on May 20, 2009, loaded with 360 MT Thailand Glutinous Rice 10% Brokens consigned to the NFA in behalf of GT Trading.
"XXXX"	Telefax from the NFA dated May 27, 2009 relating to the arrival of the vessel MV WAN HAI 510 on May 25, 2009, loaded with 90MT, China White Rice consigned to the NFA in behalf of GT Trading.
"YYYY"	Telefax from the NFA dated July 2, 2009 relating to the arrival of the vessel MV VINASHIN FREIGHTER on June 30, 2009, loaded with 250MT, Vietnam White Rice 25% Brokens consigned to the NFA in behalf of GT Trading.

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"ZZZZ"	Letter of the NFA dated May 25, 2009 addressed to the BOC relating to the arrival of the vessel MV VINASHIN FREIGHTER on June 30, 2009, loaded with 250MT, Vietnam White Rice 25% Brokens consigned to the NFA in behalf of GT Trading.
"AAAAA"	Letter of the NFA dated July 2, 2009 addressed to the BOC relating to the arrival of the vessel MV WARNOW PORPOISE on June 30, 2009, loaded with 250MT, Vietnam White Rice 25% Brokens consigned to the NFA in behalf of GT Trading.
"BBBBB"	Telefax from the NFA dated July 3, 2009 relating to the expected arrival of the vessel MV SINAR BANTEN July 10, 2009, loaded with 382.50MT, Myanmar Emata Rice 25% Brokens consigned to the NFA in behalf of GT Trading.
"CCCCC"	Letter of the NFA dated July 3, 2009 addressed to the BOC relating to the expected arrival of the vessel MV SINAR BANTEN July 10, 2009, loaded with 382.50MT Myanmar Emata Rice 25% Brokens consigned to the NFA in behalf of GT Trading.
"DDDDD"	Telefax from the NFA dated July 20, 2009 relating to the arrival of the vessel MV MAERSK BROOKLYN 0909 on May 26, 2009, loaded with 312 MT Thailand Glutinous Rice 10% Brokens consigned to the NFA in behalf of GT Trading.
"EEEEE"	Telefax from the NFA dated July 22, 2009 relating to the arrival of the vessel MV YM IMMENSE 043B on July 18, 2009, loaded with 75MT Vietnam White Rice consigned to the NFA in behalf of GT Trading.
"FFFFF"	Telefax from the NFA dated August 28, 2009 relating to the arrival of the vessel MV KOTA RUKUN on July 31, 2009, loaded with 664MT Myanmar White Rice 25% Brokens consigned to the NFA in behalf of GT Trading.
"LLLLL"	Summary of Rice Importation made by GT Trading for the year 2009, certified true and correct and based on official records/documents of the NFA.

"MMMMM" to "MMMMM-1"	Judicial Affidavit of Christopher T. Patdo consisting of thirteen (13) pages and the name and signature of Christopher T. Patdo found on page 12 ("MMMMM-1").
"NNNNN" to "NNNNN-1"	Judicial Affidavit of Ma. Gracia R. Bolutano consisting of six (6) pages and the name and signature of Ma. Gracia R. Bolutano found on page 5 ("RRRRR-1").

On May 8, 2014, accused filed his Demurrer to Evidence[24], which was denied for lack of merit in a Resolution[25] promulgated on July 21, 2014.

Undaunted, accused filed a Motion for Reconsideration (of the Honorable Court's Resolution dated 21 July 2014)[26] on August 15, 2014, but the same was denied in October 21, 2014 Resolution[27].

Thereafter, the accused commenced the presentation of his witnesses:

THE EVIDENCE PRESENTED BY THE DEFENSE

I. Romeo L. Maramba

The first witness for the accused, Romeo L. Maramba, testified by way of Judicial Affidavit[28], that GT Trading engaged his services sometime in 2009 and 2010, as a bookkeeper thereof on a "project basis" for the purpose of preparing and filing its ITRs for taxable years 2009 and 2010 and corresponding financial statements based on the receipts presented to him. After preparing the same, he would turn over said documents to Mr. Eugene Caligner, the Operations Manager of GT Trading, for filing. He mentioned that GT Trading is engaged in general merchandise and trading. It sells furniture and school supplies like notebooks and reams of bond paper. He claimed that he was not aware that GT Trading was engaged in the business of rice importation. He testified that, at the time he prepared GT Trading's ITR for the year 2009, the latter was operating at a loss as reflected in the documents presented to him. He said that the accused did not participate in the preparation of the ITR nor check the entries thereon. The accused

[24] Docket (Vol. II), pp. 816-845.
[25] Docket (Vol. II), pp. 872-883.
[26] Docket (Vol. II), pp. 888-902.
[27] Docket (Vol. II), pp. 907-908.
[28] Docket (Vol. II), pp. 928-937.

merely signed his name on the said ITR. Since the deadline for the filing of the ITR was fast approaching, he asked the accused to sign in advance the ITR as well as the "Statement of Management's Responsibility".

On cross-examination, the witness testified that he is not a Certified Public Accountant. He mentioned that the contents of the ITRs and Financial Statements were based on the official receipts, vouchers and other documents presented to him. He did not require GT Trading to submit its cash ledgers. When he was asked if he explained to the accused the documents he prepared for the latter before signing the same, he answered, *"Actually as I said, I explained to him about the preparations of the ITR however since he did not know anything about it he trusted me in this particular preparation."* He stated that he was not aware of any rice importation made by GT Trading since no document was presented to him relative to the same.[29]

On re-direct examination, he stated that it was Officer Manager Eugene who gave him all the documents of GT Trading.[30]

On re-cross examination, he stated that "he did not know about the rice importation."[31]

II. Atty. Eric C. Opriasa

The second witness for the defense, Atty. Eric C. Opriasa, testified by way of Judicial Affidavit[32], that the accused engaged the services of their law firm in connection with the present criminal case. He also stated that the accused authorized him, through a Special Power of Attorney, to appear on the latter's behalf in an Informal Conference called by the National Investigation Division (NID) of the BIR on August 2, 2013, 9:00 a.m., at Room 211, NID, BIR, National Office Bldg., Diliman, Quezon City. Upon arrival at the BIR's office, he went directly to the NID and was referred to BIR Examiner Alex Manguba, Supervisor of the team handling the case of the accused. He was told to submit the SPA to the clerk which he did. Thereafter, the BIR Examiners informed him that they are preparing the Final Assessment Notice which they will issue to the accused.

On cross-examination, he admitted that he did not submit any documentary evidence during the said Informal Conference.[33] He

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[29] TSN dated January 28, 2015, pp. 12-18.
[30] TSN dated January 28, 2015, p. 20.
[31] TSN dated January 28, 2015, p. 23.
[32] Docket (Vol. II), pp. 944-951.
[33] TSN dated March 4, 2015, p. 13.

mentioned that he was not aware if the accused received the Final Assessment Notice and if the latter filed a protest to the same.[34]

On March 19, 2015, accused filed his Formal Offer of Exhibits[35], offering therein Exhibits "4" to "4-D", "5", "6", "7" to "7-1" and "8", which were all admitted in a Resolution[36] promulgated on May 11, 2015.

Subsequently, the case was submitted for decision[37] after taking into consideration the accused's Memorandum[38] filed on June 15, 2015, and Plaintiff's Memorandum[39] filed on July 23, 2015.

THE ISSUE

The main issue for the resolution of this Court is whether or not Accused is liable for the offense charged in the Information.

DISCUSSION

The Court is bereft of jurisdiction over the instant case

Before delving on the merits of this case, *We* find it imperative to first and foremost determine whether or not the Court of Tax Appeals (CTA) properly acquired jurisdiction over the instant criminal case.

Basic is the rule that jurisdiction is conferred by law. Therefore, the CTA, being a court of special jurisdiction, can take cognizance only of the matters that are clearly within its jurisdiction. Section 7 (b) (1) of Republic Act No. 9282[40], amending Republic Act No. 1125[41], specifically provides:

"Sec. 7. Jurisdiction. — The CTA shall exercise:

(a) x x x

[34] TSN dated March 4, 2015, p. 14.
[35] Docket (Vol. II), pp. 956-960.
[36] Docket (Vol. II), pp. 982-983.
[37] Resolution promulgated on July 29, 2015, Docket (Vol. II), p. 1028.
[38] Docket (Vol. II), pp. 984-1001.
[39] Docket (Vol. II), pp. 1009-1027.
[40] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[41] AN ACT CREATING THE COURT OF TAX APPEALS.

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. Exclusive **original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized. (Emphasis supplied)

Further, Section 3, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically enumerates the cases that fall within the jurisdiction of the Court of Tax Appeals in Division, to wit:

"SEC. 3. Cases within the jurisdiction of the Court in Divisions. — The Court in Division shall exercise:

(a) x x x

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) **Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and

(2) **Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction** in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or **where there is no specified amount claimed;** (Emphases supplied)

In this case, while there is no dispute that there is no requirement for the precise computation and assessment of tax before there can be a criminal prosecution, there is, however, a necessity to allege in the Information, following the foregoing provisions, that the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least one million pesos (P1,000,000.00) to vest jurisdiction to this Court.

But in this case, there was no mention whatsoever of the principal amount of taxes and fees claimed in the accusatory portion of the Information. Consequently, the Information failed to meet the minimum jurisdictional amount prescribed by law and the rules in order to confer jurisdiction upon this Court. By such reason, this Court has no recourse but to dismiss the instant case on account of lack of jurisdiction. **The instant criminal case should therefore be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.**

Settled is the rule that the jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Also, Section 1, Rule 9 of the Rules of Court states that when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[42] Therefore, it is of no moment even if the parties in this case have agreed during the pre-trial conference that this Court has jurisdiction over the instant case[43].

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[42] Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185432, June 4, 2014.
[43] Par. A1, Stipulated Facts and Issues, Pre-Trial Order dated June 17, 2013, Docket (Vol. I), p. 339.

Considering that this Court is bereft of jurisdiction to hear the instant criminal case, *We* cannot, likewise, rule on the alleged civil liability of the accused.

WHEREFORE, in view of the foregoing, the criminal case against accused Gerardo C. Teves for violation of paragraph 1, Section 255 of the 1997 National Internal Revenue Code, as amended, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

****

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-299**
- versus -	For: Violation of Section 255, paragraph 1, of the National Internal Revenue Code, as amended
	Members:
GERARDO C. TEVES, Accused.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*.
	Promulgated: NOV 16 2015 9:00 a.m.

x---x

DISSENTING OPINION

CASTAÑEDA, JR., ***J.:***

With due respect to my esteemed colleagues, I dissent as to the finding that the case be dismissed for lack of jurisdiction.

In my opinion, the attachments to the Information are deemed integral part of the Information filed in Court. Attached to the Information, among others, are the Resolution of the Prosecutor and the Joint Complaint-Affidavit of the Revenue Officers of the Bureau of Internal Revenue (BIR), where the amount of taxes being claimed from the accused are stated.

A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.[1]

On the other hand, an Information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[2]

[1] Section 3, Rule 110 of "The Revised Rules on Criminal Procedure."
[2] Section 4, Rule 110, "The Revised Rules on Criminal Procedure."

A careful perusal of the Joint Complaint-Affidavit of the Revenue Officers of the Bureau of Internal Revenue (BIR) shows that the basic deficiency income tax due is ₱99,325,819.21[3], and the basic VAT due is ₱4,525,294.49.[4] The Prosecutor' Resolution also state the allegation of the BIR's claim, including the interest thereon, of the income tax due and collectible amounting ₱129,951,247.02, [5]and VAT for taxable year 2009 in the amount of ₱6,121,718.83.[6]

Jurisdiction of a court over a criminal case is determined by the allegations in the complaint **or** information.[7] Considering the allegations of the basic amount of taxes being claimed in this case as stated in the Joint-Complaint Affidavit and also the total taxes claimed by the BIR as stated in the Resolution of the Prosecutor, there is no doubt that this Court has jurisdiction.

It is emphasized that the CTA has exclusive original jurisdiction when the principal amount of taxes claimed is P1Million and above.[8] In this case, the amount claimed are ₱99,325,819.21 and ₱4,525,294.49 for the basic deficiency income tax due and the basic VAT due, respectively, thus, CTA has exclusive original jurisdiction over this case. In view of the foregoing, this case should not be dismissed for lack of jurisdiction.

Let us now proceed whether or not the accused is liable for violation of paragraph 1 of Section 255 of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended.

The violation arose from accused's purported failure to supply correct and accurate information in his Annual Income Tax Return (ITR) for taxable year 2009. Allegedly, he made various rice importations during 2009 which were not declared in his Annual ITR resulting in the substantial underdeclaration of sales, and consequently, causing deficiency taxes.

The accused allegedly committed the crime of willful failure to supply correct and accurate information in his 2009 Annual ITR, a violation of the first paragraph of Section 255 of the NIRC of 1997, as amended, which provides:

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[3] Docket, p. 18.
[4] Docket, p. 19.
[5] Docket, p. 7.
[6] Docket, pp. 7-8.
[7] *Treñas v. People*, G.R. No. 195002, January 25, 2012; *Rogelio M. Esteban v. Sandiganbayan and the People*, G.R. No. 146646-49, March 11, 2005.
[8] Sec. 7(b)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

> 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 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 (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> xxx xxx xxx

The elements of Section 255 of the NIRC of 1997, as amended, are as follows:

1. The accused is a person required under the Tax Code or by rules and regulations to pay any tax, make a return, keep any record, or 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. Such failure to supply correct and accurate information is willful.

Accused is a person required by law to pay any tax, make a return, keep any record, or supply correct and accurate information.

Accused is required to file a return and declare income tax under Sections 51(A) and 74(A) in relation to Section 32(A) of the NIRC of 1997, as amended, to wit:

> 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

(2)The following individuals shall not be required to file an income tax return:

(a)An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided*, **That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income**;

xxx xxx xxx

(3)The foregoing notwithstanding, any individual not required to file an income tax return may nevertheless be required to file an information return pursuant to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(4)The income tax return shall be filed in duplicate by the following persons:

(a)**A resident citizen –on his income from all sources**; *(Emphasis supplied)*

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.*(Emphasis supplied)*
>
> SEC. 32.*Gross Income.–*
>
> (A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
>
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
>
> xxx xxx xxx

Based on the foregoing, the prosecution must prove that accused is an individual who is required by law to file the tax returns and to pay the corresponding taxes. In order to prove this element, the prosecution presented Revenue Officer III Marcial M. Padilla and Special Investigator I Jessie M. Juangco, who both testified on the process of "profiling". According to them, all the relevant data/information regarding the accused were accessed via the BIR's centralized database, *i.e.*, the BIR Integrated Tax System (ITS). *ge*

In support of their testimony, the prosecution presented the BIR-ITS printout[9] of the accused showing the following registration details:

1. Accused is a **registered taxpayer of Revenue District Office No. 33 (Intramuros-Ermita-Malate)**;
2. Accused's **Tax Identification Number 209-041-595-000, issued on January 15, 2001**;
3. Accused's registered taxpayer type is **Single Proprietor**; and
4. Accused'**strade/branch name is G.T. Trading**located at3/F BF Condominium, Andres Soriano Ave., Intramuros, Manila.

The same facts were also stipulated by the parties in the Pre-Trial Order[10]. In addition, the prosecution presented accused's 2009 Annual ITR[11], together with his Financial Statements[12], and 2009 first[13], third[14], and fourth[15] Quarterly VAT Returns. Hence, the first element of the crime was clearly established.

Accused willfully failed to supply correct and accurate information in his 2009 Annual ITR.

A thorough analysis of accused's 2009 Annual ITR, together with his Financial Statements, in relation to his 2009 first, third and fourth Quarterly VAT Returns, reveals **incorrect**, **inconsistent** and **inaccurate** reporting of information.

By just looking at the tables below, there is a manifest showing that accused failed to supply correct and accurate information in his 2009 Annual ITR. There is a huge disparity between sales per ITR and Financial Statement *vis-a-vis* sales per VAT Returns, to wit:

A. Total Sales per 2009 Annual ITR and Financial Statement *vis-à-vis* 2009 Quarterly VAT Returns

Sales	Per Annual ITR[16]	Per Financial Statement[17]	Per VAT Returns

[9]Exhibit "A", Docket, p. 682.
[10] Docket, pp. 339-340.
[11]Exhibits "E" to "E-1", Docket, pp. 687-688.
[12]Exhibits "E-2" to "E-4", docket, pp. 689-691.
[13]Exhibit "F", docket, p. 692.
[14]Exhibit "F-1", docket, p. 693.
[15]Exhibit "F-2", docket, p. 694.
[16]Exhibits "E" to "E-1", docket, pp. 687-688.
[17]Exhibits "E-2" to "E-4", docket, pp. 689-691.

1st quarter[18]			₱ 180,094.63
2nd quarter[19]			-
3rd quarter[20]			12,564,401.00
4th quarter[21]			-
Total Sales	₱241,830.00	₱241,830.00	₱12,744,495.63

Based on accused's 2009 Annual ITR, his total sales amounted only to ₱241,830.00. This is the same amount reported in his Statement of Income for the Year Ended December 31, 2009. However, the sales total reported in the 2009 Quarterly VAT Returns amounting to ₱12,744,495.63 was not reported in the 2009 Annual ITR. Even assuming that the sales for the third quarter of 2009 were considered exempt sales for VAT purposes, still, the same must be reported in his ITR for income tax purposes.

B. Total Cost of Sales/Purchases/Inventory per 2009 Annual ITR and Financial Statement *vis-à-vis* 2009 Quarterly VAT Returns

	Per Annual ITR	**Per Financial Statement**	**Per VAT Returns**
Purchases	Not specifically enumerated		₱25,213,303.06[22]
Ending Inventory	0	0	
Cost of Sales	₱97,102.50	₱97,102.50	

As per VAT Returns, the total purchases amounted to ₱25,213,303.06, while only the amount of ₱97,102.50 was reflected in the total cost of sales per Annual ITR and Financial Statement. Supposing not all purchases were sold, then the remaining purchases should have been reported as part of his ending inventory, or at least, reported in his "Statement of Income".

We will now determine if the incorrect, inconsistent, and inaccurate reporting in this case was willful.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[23] "Wilful" means "premeditated;

[18]Exhibit "F", docket, p. 692.
[19]For this quarter, there was no VAT Return presented during trial.
[20]Exhibit "F-1", docket, p. 693.
[21]Exhibit "F-2", docket, p. 694.
[22] (First Quarter) ₱70,927.45 + (Third Quarter) ₱25,142,375.61 = ₱25,213,303.06.
[23]Black's Law Dictionary, 6th Ed., p. 1599.

malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence".[24]

The totality of actions and inactions of the accused showed that he willfully failed to supply correct and accurate information in his 2009 Annual ITR as shown particularly by the following documentary and testimonial evidence of both parties:

A. Accused admitted his rice importations during 2009.

1. The accused stipulated that in 2009, he operated as a single proprietor and was engaged in business under the trade name GT Trading;[25]

2. The accused stipulated that he imported rice on various dates in 2009;[26] and

3. The 2009 Quarterly VAT Returns showed importation of goods other than capital goods.

B. Accused imported 4,999.60 metric tons of rice in sixteen (16) shipments in 2009.

1. Testimony of NFA GOO1 Christopher T. Patdo that GT Trading is one of the private sector rice importers awarded to participate in the NFA's PSF rice importation using the NFA's Tax Expenditure Subsidy in the year 2009.Of the 5,000 metric tons of rice importation awarded to GT Trading, it actually imported 4,999.60 metric tons in its 16 shipments in 2009; and

2. Various documents[27] (Letters and Telefax of NFA to BOC) relative to the accused's rice importation, particularly, the "**Summary of Rice Importation made by GT Trading for the year 2009**"[28],certified true and correct and based on official records/documents of the NFA, showing accused's rice importations. Jr

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[24]*Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996, 257 SCRA 200, 224-225.
[25]Pre-Trial Order, docket, p. 340.
[26]*Ibid.*
[27]Exhibits"WWWW", "XXXX", "YYYY", "ZZZZ", "AAAAA", "BBBBB", "CCCCC", "DDDDD", "EEEEE", and "FFFFF", docket, pp. 775-784.
[28]Exhibit "LLLLL", docket, p. 785.

C. Accused did not disclose his rice importations to his bookkeeper.

1. Testimony of the accused's bookkeeper, Mr. Romeo L. Maramba, that he was not aware of GT Trading's business of rice importations, and that based on the documents presented to him, he did not see any document related to rice or the importation of rice;[29]and

2. The signed "Statement of Management's Responsibility"[30] attached to the Financial Statements, showing that accused assumed full responsibility of the contents of the report.

From the start, it can be gathered that accused deliberately and consciously failed to supply the correct and accurate information in his ITR. During the preparation of the 2009 Annual ITR, accused neither mentioned to his bookkeeper the rice importations nor provided him with documents of importations. The accused's bookkeeper, Mr. Romeo L. Maramba, testified that he was not aware of GT Trading's business of rice importations, and that based on the documents presented to him, he did not see any document related to rice or the importation of rice. This representation is inconsistent and in conflict with accused's earlier admission in court that he imported rice on various dates in 2009.

In the testimony of accused's bookkeeper, Mr. Romeo L. Maramba, it was disclosed that he asked the accused to sign in advance the ITR and Statement of Management's Responsibility in order to avoid the hassle of waiting for him to sign the documents. He confirmed that accused merely relied on him in the preparation of the ITR.[31]

This contention cannot exonerate the accused from his tax liabilities. At the time the accused signed the "Statement of Management's Responsibility", he took full responsibility for all information and representations contained in the financial statements. Besides, he even made a representation that he reviewed the statements before the same were approved and submitted to him.

The signed "Statement of Management's Responsibility" states:

GERARDO C. TEVES
3/F BF Condo Intramuros Manila

[29]Exhibit "5", Judicial Affidavit, docket, p. 966.
[30]Exhibit "E-2", docket, p. 689.
[31]Exhibit "5", Judicial Affidavit, docket, pp. 968-969.

STATEMENT OF MANAGEMENT'S RESPONSIBILITY

The management of GT Trading is responsible for all information and representation contained in the financial statements for the year ended December 31, 2009. The Financial Statements have been prepared in conformity with generally accepted accounting principles and reflect the amounts that are on actual figures.

In this regard, management a system of accounting and reporting which provides the necessary internal controls to ensure that transactions are properly authorized and recorded. Assets are safeguarded against unauthorized user or disposition and liabilities are recognized. The management complied with the provisions of PCTGE, EXPANDED WITHHOLDING TAX AND INCOME TAX and other related rules and regulations of BIR and released our auditor to any civil or criminal liabilities that our Financial Statements representation might bring.

The management reviews the Financial Statements before such statements are approved and submitted to owner of the company.

(signed)
GERARDO C. TEVES
Owner-General Manager

By principle of estoppel, accused is prevented from denying his acts, representations or admissions that will prejudice others who rightfully relies on such representations.[32] Moreso, accused cannot escape the application of "willful blindness" doctrine which is defined as "deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable"[33]."The application of this principle is appropriate in instances when a person suspects a fact, realizes its probability, but refrains from obtaining final confirmation in order to be able to deny knowledge if apprehended."[34]

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[32] *GE Money Bank, Inc. (Formerly Keppel Bank Philippines, Inc.) vs. Spouses Victorino M. Dizon and Rosalina L. Dizon*, G.R. No. 184301, March 23, 2015.
[33] Black's Law Dictionary, 8th Ed., p. 1630.
[34] *People of the Philippines vs. Benjamin Kintanar*, CTA Crim. Case Nos. O-031 & O-032, Resolution dated February 23, 2011 affirmed in CTA EB Crim. Case No. 012, May 7, 2012.

Also, the credence and weight to the testimony of Christopher T. Patdo, GOO1 of the NFA, that of the 5,000 metric tons of rice importation awarded to GT Trading, it actually imported 4,999.60 metric tons in its sixteen (16) shipments in 2009. His testimony was supported by the "Summary of Rice Importation made by GT Trading for the year 2009" issued by the NFA, where the name of the accused appears. Both the testimony and the issuance of supporting document were performed as part of the official duties that enjoy the presumption of regularity,[35] "which presumption may be overturned only if there is clear and convincing evidence to the contrary or that they were inspired by improper motive."[36]

Considering the testimony of Mr. Patdo and the accused's own admission, it can be concluded that the "GT Trading" mentioned in the documents is the same entity as the one owned by the accused. The "Summary of Rice Importation made by GT Trading for the year 2009" issued by NFA confirms the earlier admission of the accused that he imported rice on various dates during 2009. Moreover, accused failed to explain what happened to the purchases made during the third quarter of 2009 amounting to ₱25,142,375.61.It was neither reported in the ending inventory nor in the sales account.

As regards the issue on alleged violation of due process, the same is untenable. The accused argues that the Complaint was hastily filed on October 13, 2011 or just one day after the lapse of the period granted to the accused to submit documents. The accused questions the basis of the Complaint when the complainants did not even check the documents required of him.

Records show that the investigating revenue officers obtained information from third party by sending access letters[37] to various government agencies. The use of third party information or "Best Evidence Obtainable" is allowed under Section 6(B) of the NIRC of 1997, as amended. Moreover, "the government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income."[38]

In the Memorandum[39] for the accused, he stated that in a letter dated September 29, 2011, the BIR gave him until October 12, 2011 to comply with the LOA. In other words, accused was given ample time or two (2)

[35]Section 3(m), Rule 131 of the Revised Rules on Evidence.
[36]*People of the Philippines vs. Nieva Alberto Y De Nieva*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 709.
[37]Exhibit "B", docket, p. 683.
[38]*Bureau of Internal Revenue, as represented by the Commissioner of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014.
[39]Docket, p. 987.

months to submit the needed documents. Even during investigation, he was able to submit his counter-affidavit[40]. Hence, the fundamentals of due process were met.

In view of the established facts taken from the parties' stipulations and the evidence on hand, the prosecution successfully established the guilt of the accused beyond reasonable doubt as to the crime charged.

Accused's civil liability

It appears that the alleged tax deficiencies (₱129,951,247.02[41] for income tax and ₱6,121,718.83[42] for VAT, exclusive of penalties, surcharges and interest) stated in the Pre-Trial Order[43]are initial computations contained in the Joint Complaint Affidavit. On the other hand, as per FLD/Assessment Notice, the alleged tax deficiencies were increased to ₱448,586,408.88 for income tax and ₱17,097,009.39 for VAT.

Since there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution, the issuance of PAN and FAN even after the filing of Information is valid. The Supreme Court made it clear in the case of *Adamson, et al. vs. Court of Appeals, et al.*[44], citing the case of *Ungab vs. Cusi*[45], that an assessment is not necessary to a criminal prosecution, *viz.*:

> An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

As borne by the records, the PAN[46] was issued and received by the accused on August 28, 2013, followed by the FLD/Assessment Notice[47] dated October 17, 2013.The witness for the prosecution, Veneracion P.

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[40]Par. 55,Memorandum for the accused, docket, p. 999.
[41]Joint Complaint Affidavit, docket, p. 745.
[42]*Ibid.*, docket, p. 746.
[43]Docket, p. 340.
[44]G.R. Nos. 120935 and 124557, May 21, 2009, 588 SCRA 27, 46.
[45]G.R. Nos. L-41919-24, May 30, 1980, 97 SCRA 877.
[46]Exhibit "TTTT", docket, pp.763-767.
[47]Exhibit "UUUU", docket, pp.768-774.

Prado, Intelligence Officer II of the BIR, testified that the accused himself signed his name, signature and date of receipt on the receiving copy of the PAN.[48]Since they did not receive any letter, correspondence or protest from the accused regarding the PAN, they issued the FLD[49], which was served to the accused on October 29, 2013[50]. The FLD was personally served to the accused who himself affixed his name and signature on the BIR's receiving copy.[51]

During cross-examination, Ms. Prado testified that the period allowed for the accused to protest has not yet lapsed, however, as of the time she testified she has yet to receive an answer or a protest from the accused:

> JUSTICE COTANGCO-MANALASTAS:
> Q Was he accorded due process considering that it was filed only on October 29, 2013?
>
> WITNESS:
> A Yes Your Honor.
>
> Q Yes? You investigated Mr. Teves, he was given opportunity to present evidence before you?
>
> A He presented some documents, Your Honor.
>
> Q When was this?
>
> A During my investigation, Your Honor.
>
> Q When did you conduct the investigation? Based on your affidavit Ms. Witness, answer 41, the Formal Letter of Demand consisting of seven pages was served to Mr. Teves on October 29, 2013. And you were asked earlier, does this mean that he has still opportunity to protest and you said yes?
>
> WITNESS:
> A Yes, Your Honor.

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[48]A36, page 8 of Judicial Affidavit, docket, p. 449.
[49]A38, page 9 of Judicial Affidavit, docket, p. 450.
[50]A41, page 9 of Judicial Affidavit, docket, p. 450.
[51]A42, page 10 of Judicial Affidavit, docket, p. 451.

JUSTICE COTANGCO-MANALASTAS:
Q So up to October 29 up to today, was there an opportunity for Mr. Teves to present his evidence, was he called to your office, was he accorded due process before the filing of this case?

A In the Final Letter of Demand, Mr. Teves has the right to present his documents.

Q Yes, was he able to do that?

A As of this date, I still have not received an answer from him, Your Honor.

JUSTICE CASTAÑEDA, JR.:
Q Did he file a protest?

WITNESS
A I have not received any protest.

JUSTICE CASTAÑEDA, JR.:
All right continue.

ATTY. DUEÑAS II:
Q Is it not a fact Mr. Witness, that accused has thirty (30) days within which to file protest from the service of the Letter of Demand or Final Notice of Assessment?

WITNESS:
A Yes, sir.

Q And that period has not lapsed?

A Yes, sir.[52]

While it is true that the period to file a protest has not yet lapsed at the time Ms. Prado was presented to testify, the defense, however, did not offer any proof that accused indeed protested the FLD/Assessment Notice. Based

[52]TSN dated November 25, 2013, pp. 20-22.

on the records, accused did not challenge or dispute the assessment in accordance with the remedies provided by law.

All told, "tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise."[53] In the case of *Marcos II vs. Court of Appeals, et al.*[54], the Supreme Court held:

> xxx the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. xxx

The Penalty

Section 255 of the NIRC of 1997, as amended, provides that upon conviction, a fine of not less than Ten Thousand Pesos (₱10,000.00) and imprisonment of not less than one (1) year, but not more than ten (10) years, shall be imposed. There being no showing that accused is disqualified from the scope of the Indeterminate Sentence Law, the same shall apply. Hence, the imposable penalty shall not be less than the minimum penalty of one (1) year, and the maximum penalty shall not exceed ten (10) years, the maximum prescribed by law.

The imposition of a fine of ₱10,000.00 and the indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, is in accordance with law. This is without prejudice to the application of Section 280 of the NIRC of 1997, as amended, in the event that the accused has no property with which to meet the fine imposed upon him, or is unable to pay such fine, in which case, he shall be subject to a subsidiary personal liability at the rate of one (1) day for each Eight pesos and fifty centavos (₱8.50), subject to the rules established in Article 39 of the Revised Penal Code. *gc*

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[53] *Commissioner of Internal Revenue vs. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010, 633 SCRA 139.
[54] G.R. No. 120880, June 5, 1997, 273 SCRA 47, 66-67.

In this case, the prosecution proved beyond reasonable doubt that accused Teves is guilty beyond reasonable doubt of the willfull failure to supply correct and accurate information. The accused should be sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and also to **PAY** a fine in the amount of ₱10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, as amended.

As regards the civil liability, accused should be **ORDERED TO PAY** deficiency income tax of **FOUR HUNDRED FORTY-EIGHT MILLION FIVE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED EIGHT PESOS AND 88/100 (₱448,586,408.88)** and deficiency VAT of **SEVENTEEN MILLION NINETY-SEVEN THOUSAND NINE PESOS AND 39/100 (₱17,097,009.39)** for taxable year 2009, inclusive of surcharge and interest, plus twenty percent(20%) delinquency interest per annum counted from November 16, 2013[55] until fully paid pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

Based on the foregoing discussions, the accused should be held criminally and civilly liable in this case.

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

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[55]The due date appearing in the Formal Letter of Demand, docket, p. 768.