Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	CTA CRIM. CASE No. O-164
-versus-	*Members*: DEL ROSARIO, P.J., *Chairperson,* UY, and MINDARO-GRULLA, JJ.
UNITED TRAVEL CONSULTANTS INC. AND VERILYN R. AMARANTE, *Accused.*	Promulgated: JAN 17 2018 : 3:45 pm

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution are the following:

1. Accused United Travel Consultants Inc. (UTCI)'s Motion to Dismiss Based on Demurrer to Evidence[1] filed *via* registered mail on September 18, 2017;

2. Accused UTCI's Manifestation[2] filed on September 20, 2017; and

3. Accused Verilyn R. Amarante's Demurrer to Evidence[3] filed on September 22, 2017.

On October 10, 2017, plaintiff filed its Comment and Opposition to accused UTCI's Motion to Dismiss based on Demurrer to Evidence as well as its Opposition to Accused Verilyn Amarante's Demurrer to Evidence.

Accused UTCI filed its Reply to plaintiff's Comment and Opposition on October 27, 2017.

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[1] *Docket*, Vol. III.
[2] *Ibid.*
[3] *Ibid.*

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In UTCI's Motion to Dismiss Based on Demurrer to Evidence, UTCI alleges that the evidence presented by the prosecution is insufficient to charge it for violation of Section 255, in relation to Sections 52(a), 114(a), and 257(B)(8) of the National Internal Revenue Code (NIRC) of 1997, considering that the BIR failed to prove willful failure to pay taxes or supply correct and accurate information on the part of UTCI; that the prosecution admits that the BIR did not issue or serve on UTCI any assessment notice; that the period to assess has already prescribed; and that its current officers should not be held liable for the alleged violation of the NIRC was for taxable year 2001.

UTCI emphasizes that it was able to pay its taxes for the year 2001, as confirmed by prosecution's witness, Mr. Mahinardo G. Mailig.[4] UTCI also claims that the prosecution failed to prove that UTCI wilfully failed to pay the assessed taxes. Moreover, UTCI confirms that being a travel agency, it does not derive income from sale of tickets of airline companies, but only as a commission. Yazaki Torres Manufacturing Inc. (Yazaki)'s Summary list of Sales and Purchases (SLSP) for the year 2001 that was presented by the prosecution did not include the details to determine how much was derived from the sale of UTCI. Also, the prosecution admits that the BIR did not issue any Letter of Authority or assessment notice to UTCI but a mere Letter Notice that cannot be considered as a valid assessment. Lastly, the period to assess has already prescribed, without serving any assessment notice to UTCI, but instead BIR directly filed a criminal case against its current officers.

A Manifestation was subsequently filed by UTCI on September 20, 2017, reiterating that it filed a Motion to Dismiss Based on Demurer to Evidence.

In Accused Verilyn Amarante's Demurrer to Evidence, accused emphasizes that this Court denied the admission of the exhibits for failure to present originals for comparison in a Resolution[5] dated August 18, 2017 as follows:

Exhibit	Document

[4] TSN, March 8, 2017, pp. 42-46.
[5] *Dockets,* Vol. III, pp. 1160-1161

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P-2	UTCI's Summary of list and Sales and Purchases for the Year 2001
P-5	Monthly Value-Added Tax Declaration (BIR Form 2550M) of UTCI for the month of January 2001
P-6	Monthly Value-Added Tax Declaration (BIR Form No. 2550M) of UTCI for the month of February 2001
P-7	Quarterly Income Tax Return (BIR Form No. 1702Q) of UTCI for the first quarter of taxable year 2001
P-8	Monthly Value-Added Tax Declaration (BIR Form No. 2550M) of UTCI for the month of April 2001
P-9	Monthly Value-Added Tax Declaration (BIR Form No. 2550M) of UTCI for the month of May 2001
P-10	Quarterly Income Tax Return (BIR Form No. 1702Q) of UTCI for the second quarter of taxable year 2001
P-13	Quarterly Income Tax Return (BIR Form No. 1702Q) of UTCI for the third quarter of taxable year 2001
P-17	Annual Income Tax Return (BIR Form No. 1702) of UTCI for the year ending 31 December 2001
P-18	Certification dated 19 August 2003 signed by Mahinardo Mailig
P-26	Reply-Affidavit

For failure to present their originals for comparison and for failure to identify, the documents were denied admission in evidence as follows:

Exhibit	Document
P-11	RPS computer print-out for 31 July 2001 of UTCI's monthly Value-added Tax Declaration
P-12	RPS computer print-out for 31 August 2001 of UTCI's monthly Value-added Tax Declaration
P-14	RPS computer print-out for 31 October 2001 of UTCI's monthly Value-added Tax Declaration
P-15	RPS computer print-out for 31 November 2001 of UTCI's monthly Value-added Tax Declaration
P-16	RPS computer print-out for 31 December 2001 of UTCI's monthly Value-added Tax Declaration

Amarante argues that with the exhibits having been denied, the prosecution has no other documentary exhibits that would support its theory that she is guilty of the crime charged. Amarante also claims that during the hearing on

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December 9, 2015, the prosecution's witness Alexander D. Martinez admitted in open court that she did not appear as an officer or a member of the Board of Directors of UTCI. More importantly, Amarante does not appear in the joint-affidavit. Lastly, Amarante emphasizes that the criminal charge was filed without assessment, which is in violation of due process.

In the prosecution's Comment and Opposition to accused UTCI's Motion to Dismiss Based on Demurrer to Evidence, the prosecution alleges that the Motion was filed out of time. Even if admitted by this Court, the same lacks basis as the prosecution was able to submit sufficient evidence to prove beyond reasonable doubt that accused has violated the NIRC of 1997. The prosecution insists that the Letter Notice must be considered as the assessment notice required by law and at any rate, the filing of the criminal charge is proper even without the issuance of an assessment.

In its Opposition to Accused Verilyn Amarante's Demurrer to Evidence, the prosecution reiterates that the investigation was conducted against Amarante and she was the one who prepared and signed the tax returns of UTCI. The said act already constitutes violation of the NIRC by not declaring the correct and accurate information in UTCI's tax returns. Lastly, the prosecution maintains that an assessment is not a condition *sine qua non* for filing a criminal charge before this Court.

UTCI's Reply clarifies that the Motion to Dismiss Based on Demurrer to Evidence was filed on time as the Order giving UTCI an additional ten (10) days from receipt thereof to file a Demurrer to Evidence, was received on September 7, 2017, however, since the tenth day or September 17, 2017 is a Sunday, it filed the said Motion on September 18, 2017 thru registered mail. It counters that it was actually the prosecution who filed its Comment out of time. UTCI also stresses that Section 222[6] on the exceptional 10-year

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[6] 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 of failure to file a return, the tax may be assessed, or a

period to assess only applies to fraudulent returns, which is absent in this case. Lastly, it states that there is lack of evidence to support its case after this Court denied admission of the documentary evidence presented by the prosecution.

The Court now proceeds to resolve the Demurrers to Evidence.

The question in a demurrer to evidence is whether there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.[7] Section 1, Rule 33 of the Revised Rules of Court reads as follows:

> RULE 33
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> Demurrer to Evidence
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> Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that <u>upon the facts and the law the plaintiff has shown no right to relief</u>. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Underlining Supplied.)

It must be emphasized that the evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict the accused, and that the

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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 the collection thereof.

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[7] *Nicolas vs. Sandiganbayan*, G.R. Nos. 175930-31 & 176010-11, February 11, 2008, 544 SCRA 324, cited in the recent case of *People of the Philippines vs. Jeane Catherine Lim Napoles*, CTA Criminal Case Nos. O-452 and O-453, December 6, 2017.

prosecution must rely on the strength of its own evidence, rather than on the weakness of the evidence for the defense.[8] Hence, in passing upon the sufficiency of the evidence raised in a demurrer, the Court is merely required to ascertain whether there is competent or sufficient proof to support a verdict of guilt.[9]

In the present case, accused were charged as follows:

> "SECOND AMENDED (2[ND]) INFORMATION[10]
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> "The undersigned accused UNITED TRAVEL CONSULTANTS, INC. (UTCI) and VERILYN R. AMARANTE of a violation of Section 255 in relation to **Sections 52(a), 114(a) and 257(B)(8), NIRC,** committed as follows:
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>> That on or about **November 14, 2002,** and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused UNITED TRAVEL CONSULTANTS, INC. and its Corporate Accountant VERILYN R. AMARANTE, with business address at Rm. 3E Osmena Building, 1991 A. Mabini St., Malate, this City, having filed Monthly Value-Added Tax declaration and Quarterly Income Tax Purchases filed by YAZAKI TORRES MANUFACTURING, INC. VAT-Registered Taxpayer and purchaser of services from the said UNITED TRAVEL CONSULTANTS, INC. for the same year, it has been found that there is due and collectible tax from said corporation, to wit: Deficiency Income Tax in the amount of <u>₱1,461,746.68 exclusive of charges (₱730,873.34 as surcharge) and penalties (₱714,519.32 as interest)</u> and without formally protesting against or appealing the same, did then and there willfully and

[8] *Ibid.*, citing *Madrid vs. Court of Appeals*, G.R. No. 130683, May 31, 2000, 332 SCRA 570, further citing *People vs. Comesario*, G.R. No. L-127811, April 29, 1999, 306 SCRA 400.
[9] *Ibid.*, citing *Heirs of Pedro Pasag, et. al. vs. Sps. Lorenzo,* G.R. No. 155483, April 27, 2007.
[10] *Dockets*, Vol. I, p. 334.

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> unlawfully fail<u>ed</u> to file return, supply correct and accurate information <u>in the tax return</u> and refus<u>ed</u> to, neglect<u>ed</u> to pay the <u>correct amount of tax</u> despite notice and demand made upon them to do so, to the damage and prejudice of the Republic of the Philippines, in the aforesaid amount of <u>₱1,461,746.68 exclusive of a surcharge of ₱730,873.34 and interest of ₱714,519.32</u>, Philippine Currency.
>
> CONTRARY TO LAW."

Section 255 of the 1997 NIRC provides:

> "SEC. 255 Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.- <u>Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information</u>, <u>who willfully fails to a 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</u>, 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." (Underlining Supplied.)

In relation to Section 255 of the NIRC of 1997, Sections 52(a), 114(a), and 257(B)(8) provide:

> "SEC. 52. Corporation Returns. - (A) Requirements. - Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn

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to by such officer and by the treasurer or assistant treasurer.

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SEC. 114. Return and Payment of Value-Added Tax. -

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. xxx

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SEC. 257. Penal Liability for Making False Entries, Records, or Reports, or Using Falsified or Fake Accountable Forms. -

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(B) Any person who:

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(8) Willfully attempts in any manner to evade or defeat any tax imposed under this Code, or knowingly uses fake or falsified revenue official receipts, Letters of Authority, certificates authorizing registration, Tax Credit Certificates, Tax Debit Memoranda and other accountable forms shall, upon conviction for each act or omission, be punished by a fine not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than six (6) years.

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The offense being attributed to the accused is willful failure to supply correct and accurate information, which resulted to income tax deficiency. For accused to be found guilty of such violation under Section 255 of the 1997 NIRC, three (3) essential elements must be present, to wit: 1) That a person is required to supply correct and accurate information; 2) That there is failure to supply correct and accurate information at the time or times required by law or rules and regulations; and 3) That such failure to supply correct and accurate information is done willfully.[11]

A review of the evidence admitted by the Court, *per* August 18, 2017 Resolution, reveals the following contents:

Exhibit	Document
P-1	Affidavit of Mahinardo G. Mailig, executed on August 31, 2004
P-3	Letter Notice No. 578-02 dated September 30, 2002
P-19	Affidavit of Beatriz S. Peliño executed on August 30, 2004
P-20	Joint Affidavit of Carlos S. Salazar, Daniel T. De Jesus, Ethel C. Evangelista, Flor Jasmin R. Soriano and Alexander D. Martinez, executed on August 30, 2004
P-21	Letter from Zenaida G. Garcia, Revenue District Officer dated November 11,2002, addressed to the President of the UTCI
P-22	BIR Letter to the City Prosecutor signed by Commissioner Guillermo L. Parayno, Jr.
P-23	General Information Sheet of UTCI for the year 2001
P-24	Judicial Affidavit of Alexander D. Martinez
P-24a	Signature of Alexander D. Martinez in his Judicial Affidavit
P-25	Judicial Affidavit of Mahinardo Mailig
P-25a	Signature of Mahinardo G. Mailig in his Judicial Affidavit
P-27	Judicial Affidavit of Danilo T. Pasiliao
P-27a	Signature of Danilo T. Pasiliao in his Judicial Affidavit

[11] *People of the Philippines vs. Judy Anne Santos y Lumagui*, CTA Crim. Case No. O-012, January 16, 2012.

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As earlier mentioned, Exhibits "P-2," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-12," "P-13," "P-14," "P-15," "P-16," "P-17," "P-18," and "P-26," were denied admission as evidence.[12]

In *Ungab vs. Judge Cusi, Jr.*,[13] the Supreme Court ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.[14] Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion.[15] However, in *Commissioner of Internal Revenue vs. Court of Appeals*,[16] the Supreme Court clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.[17]

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer.[18] The government is allowed to resort to all evidence or resources available to determine a taxpayer's income.[19]

The prosecution concluded that accused committed the crime of unlawfully failing to supply correct and accurate information in the tax return and neglected to pay the correct amount of tax despite notice and demand made upon them, based on the SLSP for the year 2001 submitted by Yazaki. The BIR compared the services or purchases reported on the SLSP on the one hand, with the services and purchases reported on the value-added tax (VAT) returns by UTCI, also known as the Reconciliation Listing for Enforcement System (RELIEF) audit. Where the amounts *per* SLSP submitted by suppliers, like Yazaki herein, are higher than the amount on the taxpayer's VAT returns, the BIR examiners will assess deficiency income tax and VAT on the basis that the unreported services or purchases result in

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[12] Prosecution did not present any Exhibit "P-4" as evidence.
[13] 186 Phil. 604 (1980).
[14] *Ibid.* at 610-611.
[15] *Ibid.* at 610, cited in the case of *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.
[16] 327 Phil. 1 (1996).
[17] *Manly, Supra* note 15.
[18] *Ibid.*, citing *Chamber of Real Estate and Builders' Associations, Inc. vs. Romulo et. al.*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 627.
[19] *Ibid., Li Yao vs. Collector of Internal Revenue*, 119 Phil. 207, 222 (1963).

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undeclared income. On the other hand, Amarante, being the accountant who signed the tax returns, is being charged for being the responsible person who supplied the incorrect and inaccurate information therein. As a result, accused has unpaid income tax, which is the basis of the crime of failure to supply correct and accurate information in the tax return and pay tax.

Exhibit "P-2" pertains to the SLSP for the Year 2001; whereas, Exhibits "P-7," "P-10," and "P-13" pertain to the Quarterly Income Tax Returns, in which accused Amarante is the signatory. "P-17" refers to the Annual Income tax return in which accused Amarante is also the signatory. These were the bases of the investigating officers' claim that accused did not declare the amount of ₱9,782,979.20 that Yazaki was able to procure for UTCI's services, resulting to an income tax deficiency of ₱1,461,746.68.

However, the above-mentioned exhibits were denied admission in evidence in the August 18, 2017 Resolution for failure to present the originals thereof. The denial is based on the best evidence rule found in Section 3[20] Rule 130 of the Revised Rules of Court, that is, the original document must be produced whenever its contents are the subject of inquiry. It must be emphasized that the prosecution never provided any explanation for its failure to present the originals of such. Accordingly, they were denied.

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[20] Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
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> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

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The SLSP itself, was denied admission as evidence, hence, the prosecution now has nothing to compare with UTCI's RPS Computer print-outs of monthly VAT Declarations that were actually denied admission in evidence as well. With respect to accused Amarante, with the only evidence to prove that she is the officer who signed the returns, thereby being the responsible officer who supplied the incorrect and inaccurate information therein, were denied as evidence by this Court, this case has nothing to stand on against her.

With the affidavits of the prosecution as the only evidence admitted in this case to allege under declaration of income, other than the bare statements, the testimonies were unsubstantiated by other proof that there was undeclared income of UTCI, through which accused were charged. It is imperative for the prosecution to present more evidence to support its witnesses' allegations. The prosecution could have easily presented the originals of the quarterly and annual income tax returns of UTCI. As it is, the lack of any other evidence to buttress the prosecution's declaration reduces it into self-serving assertions.[21] This omission does not hold well for the cause of the prosecution.[22]

The prosecution failed to prove that there is any income tax due from accused, creating reasonable doubt as to the guilt of accused. Accordingly, the Court finds that the evidence presented is not sufficient to sustain a conviction of accused since the prosecution failed to discharge the burden to prove all the essential elements of the crime attributed to accused.

It is an opportune time to remind public prosecutors of their vital duty to carefully study the evidence on record and ensure that they conform with the rules of admissibility, in order not to frustrate the State's interest in enforcing its criminal laws and adversely affect the administration of justice.[23]

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[21] *People vs. Santos, Jr.,* G.R. No. 175593, October 17, 2007.
[22] *Ibid.*
[23] *Jeane Napoles, Supra* note 7.

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WHEREFORE, premises considered, accused United Travel Consultants Inc's Manifestation filed on September 20, 2017 is hereby **NOTED**, and Accused United Travel Consultants Inc.'s Motion to Dismiss Based on Demurrer to Evidence, as well as Accused Verilyn R. Amarante's Demurrer to Evidence are hereby **GRANTED**. Accordingly, CTA Criminal Case No. O-164 is hereby **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice