REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

DR. VICENTE GANA CASTILLO AND DR. MA. TERESA CHAN CASTILLO
Accused.

CTA CRIM. CASE NO. O-219

For: Tax Evasion under Sec. 255 of the NIRC of 1997, as amended

Members:

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

Promulgated: OCT 07 2013
9:25 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF THE CASE

Accused spouses Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo (hereinafter referred to as "accused spouses") are charged before this Court with the Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for willful failure to file their income tax return for taxable year 2009.

STATEMENT OF FACTS

On August 3, 2011, the prosecution filed before this Court an Information dated June 3, 2011 against accused spouses, which reads as follows:

> "That on or about the 12th of April, 2010, in Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, both required to pay internal revenue taxes, did then and there, willfully, unlawfully and feloniously, and in conspiracy with each other, fail to file their Income Tax Return (ITR) for taxable year 2009 through tax evasion scheme by making it appear that they had filed their joint 2009 ITR at (BIR) RDO No. 47-East Makati City when, in truth and in fact, there was none at all as the joint ITR allegedly filed was fraudulent, to the damage and prejudice of the government in the total amount of Two Million Nine Hundred Fifteen Thousand Two Hundred Fifty Three and 7/100 (Php2,915,253.07), as basic internal revenue tax liability, exclusive of penalties, surcharges and interests.
>
> CONTRARY TO LAW."

On September 6, 2011, this Court issued Warrants of Arrest[1] against accused spouses.

The accused spouses voluntarily surrendered and submitted themselves to the jurisdiction of this Court and posted the required cash bail bond for their provisional liberty in the amount of P100,000.00 under Official Receipt Nos. 8697911 and 8697912 as per this Court's Resolution[2] dated September 8, 2011. In the same Resolution, the Court lifted and set aside the Warrants of Arrest issued on September 6, 2011.

The accused spouses then filed their Motion to Determine Probable Cause[3] on December 2, 2011, which was later denied by this Court in a Resolution[4] dated January 5, 2012.

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[1] Docket, pp. 148-151.
[2] Docket, p. 161.
[3] Docket, pp. 192-203.
[4] Docket, pp. 215-218.

Upon arraignment, the accused spouses, assisted by Atty. Luis Ma. Gil L. Gana, entered their pleas of "Not Guilty" to the offense charged.[5]

The preliminary conference and pre-trial conference were initially set on February 8, 2012 and February 20, 2012, respectively.[6] However, upon the parties' Joint Motion to Reset Preliminary Conference[7], the Court reset the Preliminary Conference to February 15, 2012.[8] After pre-trial, the Court issued a Pre-Trial Order on February 20, 2012. The Court set the initial presentation of evidence for the prosecution on March 7, 2012.[9]

The prosecution presented witnesses to establish the accused spouses' culpability, namely: Revenue Officer Emerita D. Tan[10], Revenue Officer Adelina P. See[11], Revenue Officer Gerry O. Dumayas[12], OIC-Chief of Document Processing Section Cynthia E. Potian[13], and OIC-Assistant Commissioner for Information Systems Development Service Anian R. Salazar[14].

During trial, witness Emerita D. Tan, Revenue Officer II of the Bureau of Internal Revenue (BIR) assigned at the National Investigation Division (NID), testified, by way of judicial affidavit, that a Memorandum of Assignment dated November 22, 2010 was issued by their NID OIC-Chief, Atty. Sixto C. Dy, Jr., referring to their group the case of taxpayer Ma. Teresa Chan Castillo, for the development as a possible Run After Tax Evaders (RATE) case with the instruction that a thorough preliminary investigation be conducted thereon to ascertain the veracity of the information. According to Ms. Tan, the instruction for the conduct of preliminary investigation was prompted by a Third Party Information from the BIR's Integrated System Group (ISG), pursuant to Section 5(B) in relation to Section 6(A) and (B) of the National Internal Revenue Code, showing the schedule on all income payments in the total amount of P7,431,816.00 made by Asian Hospital, Inc. to Ma. Teresa Chan Castillo for taxable year 2009 under 1604-E Alphalists.

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[5] Resolution dated January 25, 2012, Docket, pp. 225-226.
[6] *Ibid.*
[7] Docket, pp.228-229.
[8] Resolution dated February 10, 2012, Docket, p. 232.
[9] Minutes of the hearing held on February 20, 2012, Docket, p. 246; Pre-Trial Order, Docket, pp. 247-258.
[10] TSN taken on March 14, 2012.
[11] TSN taken on March 21, 2012.
[12] TSN taken on April 11, 2012.
[13] TSN taken on April 25, 2012.
[14] TSN taken on May 23, 2012.

After receiving the Memorandum of Assignment, Ms. Tan testified that she accessed the BIR's Integrated Tax System (ITS) and was able to obtain information that Ma. Teresa Chan Castillo, with Taxpayer's Identification Number (TIN) 136-898-445, is registered as taxpayer of Revenue District Office (RDO) No. 49 on July 30, 2001, married to Vicente Gana Castillo, with registered address at 16 Planet St., Bel Air Village, and with line of industry of "Private Medical, Dental and Other Health Activities".

After verification, Ms. Tan obtained the information that Ma. Teresa Chan Castillo's specialty is "pathology and laboratory medicine", while her spouse Vicente Gana Castillo's specialty is "plastic surgery, cosmetic surgery" and "plastic surgery, plastic and reconstructive surgery". Furthermore, Ms. Tan testified that the OIC-Chief of the NID, Atty. Sixto Dy, Jr., furnished them with the ITS print-out from the BIR-Returns Processing System with the information that for the tax type of income tax of TIN 136-898-445-000, "query caused no records to be retrieved" for the year 2009.

Ms. Tan's group then prepared their Memorandum on the Request for the Issuance of Letter of Authority against Ma. Teresa Chan Castillo covering taxable year 2009. Thereafter, the Commissioner of Internal Revenue (CIR) issued to their group a Letter of Authority (LOA) LOA-211-2010-00000282 dated December 13, 2010, authorizing her, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco, and Adelina P. See to conduct the investigation and to undertake an examination of the books of accounts and accounting records of Ma. Teresa Chan Castillo for all internal revenue taxes covering the period January 1, 2009 to December 31, 2009. The said Letter of Authority was personally served and was received by Celso Zamudio, who represented himself to them as the authorized representative of Ma. Teresa Chan Castillo.

Thereafter, Ms. Tan with her group conducted the investigation to corroborate the initial information obtained from the BIR's ISG and ITS through the issuance of Access Letter dated December 15, 2010 to Asian Hospital and Medical Center (AHMC).

In compliance with the Access Letter, Theophil Seiler, Chief Executive Officer of the AHMC issued Certification dated January 11, 2011 with attachments consisting of Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) of Dr. Maria Teresa Chan Castillo for the periods January 1, 2009 to March 31, 2009, April 1, 2009 to June 30, 2009, July 1, 2009 to September 30, 2009 and October 1, 2009 to December 31, 2009. On the other hand, Ma. Teresa Chan Castillo submitted on January 7, 2011 her Annual Income Tax Return (BIR Form No. 1701) allegedly filed jointly by her and her husband Dr. Vicente Gana Castillo for taxable year 2009 together with its attachments.

After examination, Ms. Tan's group found material information that (1) it was declared in the purported ITR that Dr. Ma. Teresa Chan Castillo earned income amounting to P8,165,345.00 for taxable year 2009; (2) the income of her spouse, Vicente Gana Castillo, amounted to P976,224.00 from rendering his medical services at various hospitals such as AHMC, Colinas Verdes Hospital Managers Corp., and Fortmed Medical Clinics Makati, Inc., and he also had other sources of income for the same taxable year; and (3) the face of the purported income tax return bears the receiving stamp of Revenue District Office No. 47-East Makati and the supposed filing date was April 12, 2010 or three (3) days before the deadline set by the NIRC.

Thus, in order to verify the authenticity of the submitted documents of the accused spouses, the group of Ms. Tan issued Access Letter dated January 10, 2011 to RDO No. 47-East Makati. In reply to the Access Letter, Gerry O. Dumayas, Revenue District Officer of RDO No. 47-East Makati, issued a Certification stating that "verification from available records disclosed that this office has no record of the Income Tax Return(s) for 2009 of Sps VICENTE G. CASTILLO (TIN: 128-829-651-000) and MA. TERESA C. CASTILLO (TIN: 136-898-445-000). The rubber stamps used by the district when receiving 2009 ITRs during the last filing season bore the complete names of the receiving personnel. In contrary, the rubber stamp impression on the subject ITR and attachments show no such information."

Since Dr. Ma. Teresa Chan Castillo failed to provide Ms. Tan's group other accounting records necessary in the conduct of their investigation, they caused the service of BIR Audit Requirements on January 10, 2011. Aside from requesting access of records with RDO No. 47-East Makati, Ms. Tan's group also issued Access Letter addressed to RDO No. 49-North Makati in order to verify if the accused spouses filed their income tax return with RDO No. 49-North Makati, since that is the district office where they are registered taxpayers.

In reply to their Access Letter, Cynthia E. Potian, OIC-Chief of the Document Processing Section of RDO No. 49-North Makati, issued two Certifications including attachments, certifying that accused spouses have no records of income tax returns (BIR Form No. 1701) filed for taxable year 2009.

After obtaining all documents from the BIR's ISG and ITS, AHMC, RDO No. 47-East Makati, RDO No. 49-North Makati, and the purported 2009 ITR, Ms. Tan testified that their group discovered the following material information: (1) BIR's ISG showed that a total amount of P7,431,816.00 income payments were made to Dr. Ma. Teresa Chan Castillo for taxable year 2009 under 1604-E Alphalists; (2) BIR's ITS showed that no income tax return was filed by Dr. Ma. Teresa Chan Castillo for taxable year 2009; (3) Asian Hospital and Medical Center made total income payments to Dr. Ma. Teresa Chan Castillo amounting to P7,431,816.00 for taxable year 2009; (4) Dr. Vicente Gana Castillo earned P976,224.00 from rendering his medical services at various hospitals and from other sources of income for taxable year 2009 as declared in their purported ITR; and (5) no income tax return for taxable year 2009 was filed by spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo in both RDO No. 49-North Makati and RDO No. 47-East Makati.

From the foregoing material information, Ms. Tan's group established several findings, namely: (1) spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo are Filipino citizens deriving income from the practice of their medical profession; (2) spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo are obligated to declare all their income for each taxable year in their tax returns and to pay the corresponding taxes due thereon; (3) Ma. Teresa Chan Castillo, despite having earned and received substantial amount of income from rendering her medical services at AHMC, deliberately failed to file her income tax return for taxable year 2009; (4) Vicente Gana Castillo also deliberately failed to file his income tax return for taxable year 2009 despite receiving medical fees from AHMC and other hospital and medical clinics as well as from other sources of income as declared in their purported ITR; (5) spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo failed to file their income tax return for taxable year 2009 despite their obligation to do the same under the NIRC; (6) spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo made it appear that they have filed an income tax return for the income they earned for taxable year 2009 when in fact there was none by submitting a fraudulent 2009 ITR purportedly filed at RDO No. 47-East Makati on April 12, 2010; and (7) spouses

Vicente Gana Castillo and Ma. Teresa Chan Castillo deprived the government of the total amount of P2,915,253.07 due to their non-filing of income tax return for income earned and received for taxable year 2009.

Accordingly, Ms. Tan's group made a Memorandum to the BIR Commissioner recommending that the results of the preliminary investigation conducted on the spouses be immediately forwarded to the RATE-Legal Writing and Appearance Group for evaluation and preparation of the corresponding pleadings required for the filing of criminal case against the spouses with the Department of Justice under the BIR's RATE Program.

Subsequently, the BIR Commissioner issued a letter referring to the Secretary of Justice the filing of criminal action against the accused spouses. Ms. Tan's group executed their Joint Complaint-Affidavit dated January 27, 2011 and Joint Reply-Affidavit dated March 21, 2011 in connection with the investigation that they conducted as regards the tax liabilities of the accused spouses.[15]

On cross-examination, Ms. Tan testified that in response to the Memorandum dated January 17, 2011, Ms. Potian issued a Certification stating that for taxable year 2009, they have no records of the accused spouses' ITR. Ms. Tan likewise testified that all the value-added tax (VAT) returns and withholding tax returns of the accused spouses for 2009 were furnished to her. Ms. Tan further stated that only the annual income tax return was presented to them after the LOA was issued. According to her, the said annual income tax return was a refundable return. She also mentioned that she is familiar with the Formal Letter of Demand (FLD) dated December 19, 2011 issued against the accused Ma. Teresa Chan Castillo. She said that in the FLD, she had allowed an input tax of P441,925.11 to be deducted from the output tax of the accused. According to Ms. Tan, the reason they considered there was deliberate intent on the part of the accused was because there was intent to avoid the payment of taxes amounting to P2,700,000.00. But if she were to include the expenses that she had verified and allowed in the amount of P3,600,000.00 as part of her computations of the income tax liability, in other words, deduct the P3,600,000.00 from the P7,400,000.00 gross income, less the personal deduction of P50,000, less the

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[15] Exhibit "II".

withholding tax of P1,600,000.00, Ma. Teresa Chan Castillo would have tax refund of over P166,000.00.[16]

Also, Ms. Tan testified that based on the FLD issued to accused Vicente Gana Castillo dated December 19, 2011, the only tax deficiency of Vicente Gana Castillo would be on income tax and that he has no VAT deficiency. She said that she allowed the output taxes (input taxes) that he declared in his VAT returns. And these taxes would translate to legitimate purchases and expenses that accused Vicente Gana Castillo incurred, which, if she were to include into the computation of the income tax deficiency of Vicente Gana Castillo, would result in a tax refund. Lastly, Ms. Tan testified that the FLD issued to the accused spouses was not yet final.[17]

On re-direct examination, Ms. Tan explained that before the Commissioner could allow the refund asked by the accused spouses, there must be a prior filing of the income tax return and the consequent filing of the income tax payments and excess income tax paid by the accused spouses.[18]

The findings of Ms. Tan's group in the preliminary investigation were further corroborated by the testimony of another witness for the prosecution, Ms. Adelina P. See, BIR Revenue Officer III assigned at the National Investigation Division. According to Ms. See, being the Group Supervisor, she headed the team in the preparation of the computation of the estimated deficiency income taxes of the accused spouses using all documents, data and information obtained from the BIR's ISG and ITS, AHMC, RDO No. 49-North Makati, and the purported 2009 ITR. As a result, the team arrived at the estimated deficiency income taxes of the spouses in the amount of P2,915,253.07.[19]

During cross-examination, Ms. See testified that they filed the criminal complaint against the accused spouses for willful non-filing of their ITR. Further, Ms. See mentioned that if in their verification and investigation, it turned out that there is really no tax liability of the accused, she will not be recommending the filing of the complaint. Ms. See maintained that in her investigation of the tax liabilities of accused Ma. Teresa Chan Castillo, she allowed as part of

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[16] TSN dated March 14, 2012, pp. 38-67.
[17] TSN dated March 14, 2012, pp. 78-82.
[18] TSN taken on March 14, 2012, pp. 87-89.
[19] Exhibit "JJ".

her investigation an input tax of P441,925.11. The input tax would translate to an allowed expense of P3,682,709.25. However, the said allowed expense was not taken into account in computing the income tax liability of the accused. Also, upon clarification, Ms. See testified that most of the expenses claimed under the VAT return are capital expenses and some are insurance that are considered as investment. It was further testified that in going over the VAT expenses of the accused whether they are capital or other expenses, the said expenses are legitimate expenses in the practice of the accused spouses' profession. Ms. See likewise stated that the FLD issued against Vicente Gana Castillo has no finding of any tax liability for VAT. Ms. See said that they did not review the VAT return of Vicente Gana Castillo.[20]

Ms. See also mentioned that Ms. Carmencita E. Roxas, the person who allegedly prepared and filed the ITR of the accused spouses, told her that there is someone who filed for her the purported ITR of the accused spouses for 2009. She testified that she did not bother to interview Ms. Roxas further regarding her allegation that she was the one who actually filed the ITR.[21]

Upon re-direct examination, Ms. See testified that they recommended the filing of the case against the accused spouses because upon verification of the documents submitted to them by Ms. Roxas, they found out that the document had not been filed with the proper RDO. Moreover, Ms. See testified that if the spouses practicing their profession did not earn any income, they still have the obligation to file.[22]

On the other hand, Mr. Gerry O. Dumayas, incumbent Revenue District Officer of RDO No. 47-East Makati, testified, by way of Judicial Affidavit, on the Certification issued relative to the records of the accused spouses. According to Mr. Dumayas, the information contained in the Certification was derived from his office which keeps on file accurate computerized records of the status of all the taxpayers in his area of jurisdiction based on the Integrated Tax System. It was further testified that based on the ITS of RDO No. 47-East Makati, as of January 12, 2011, the date of the Certification that he issued, the district office has no record of the income tax return(s) for 2009 of the accused spouses.[23]

[20] TSN taken on March 21, 2012, pp. 16-31.
[21] TSN taken on March 21, 2012, pp. 34-35.
[22] TSN taken on March 21, 2012, pp. 36-39.
[23] Exhibit "KK".

On cross-examination, Mr. Dumayas testified that in issuing the Certification that the office has no record of any ITR filed by the accused, he relied not only on the computer records, but also on the manual record prepared by the receiving officers that yielded no tax return for Mr. Castillo. Mr. Dumayas clarified that the stamp on the purported ITR of the accused spouses for 2009 bears no name of the Revenue Officer who received the same. Furthermore, Mr. Dumayas said that the stamp is in a way similar to the stamp that they used in acknowledging returns in their district except that it bears no name of the Revenue Officer who received it. According to Mr. Dumayas, all rubber stamp being used by the District Office at that time bears the name of every Revenue Officer. Mr. Dumayas further clarified that if they have forty (40) Revenue Officers, they have forty (40) different modes and each bears different name. Mr. Dumayas said that he does not know who submitted the purported ITR to the Deputy Commissioner or how the said return came to the possession of the Deputy Commissioner.[24]

Ms. Cynthia E. Potian, OIC-Chief of the Document Processing Section of RDO No. 49-North Makati, testified via Judicial Affidavit that she was the one who issued the Certification dated January 26, 2011 relative to the records of accused spouses for taxable year 2009, stating that the accused spouses have no record of income tax return for the year 2009.[25]

The counsel for the accused spouses dispensed with the cross-examination of Ms. Potian and both parties agreed to stipulate that the amount of P7,431,816.00 for the year 2009 was paid by Asian Hospital Medical Center to the accused Dr. Ma. Teresa Chan Castillo. Thus, the prosecution also dispensed with the presentation of its witness, Mr. Cambaling of Asian Hospital Medical Center.[26]

The witness for the prosecution, Ms. Anian R. Salazar, OIC-Assistant Commissioner for Information Systems Development Service, testified by way of Judicial Affidavit, that their office has data on the details of income payments made to the accused spouses for taxable year 2009. According to Ms. Salazar, she issued a Memorandum dated February 10, 2012, together with attachment of print-out details of income payments made to the accused spouses, which contains the schedule of all income payments made by Asian

[24] TSN taken on April 11, 2012, pp. 10-18.
[25] Exhibit "LL".
[26] TSN taken on April 25, 2012.

Hospital Inc., Fortmed Medical Clinics Makati, Inc., Eastwest Healthcare, Inc., Batangas (Western Phil. Colleges), Blue Cross Insurance Incorporated and Hospital Managers Corporation to Vicente Gana Castillo and all income payments made by Asian Hospital Inc. to Ma. Teresa Chan Castillo for taxable year 2009 under 1604-E Alphalists, which were all extracted from Third Party Information.[27] The counsel for the accused spouses dispensed with the cross-examination of Ms. Salazar.[28]

The prosecution also presented its documentary evidence marked as Exhibits "A" to "MM-1", which were admitted by this Court as evidence for the prosecution with the exception of Exhibits "C" to "C-1", "G" to "H-8", "M", "N", "Q" to "R-1", "T" to "BB-3" and "GG", which were denied admission for the prosecution's failure to include the same in its Formal Offer of Evidence.[29] With the admission of the offered exhibits, the prosecution rested its case.

On July 30, 2012, accused spouses filed their Demurrer to Evidence[30], praying for the dismissal of the complaint on the ground that the prosecution's evidence failed to prove beyond reasonable doubt the accused spouses' guilt in the alleged willful non-filing of ITR.

In a Resolution[31] dated September 12, 2012, the Court denied the Demurrer to Evidence for lack of merit. In the same Resolution, the case was set for the initial presentation of evidence for the accused spouses.

The acused spouses presented as evidence the testimony of Carmencita E. Roxas[32] and Aris G. Lazarte[33].

During direct examination, Ms. Carmencita E. Roxas testified that she was the one who prepared the income tax returns of the accused spouses for filing with the BIR. According to Ms. Roxas, she first filed their ITR when they returned from the US in 1991 to practice their medical profession here in the Philippines. She added

[27] Exhibit "MM".
[28] TSN taken on May 23, 2012.
[29] Resolution dated July 25, 2012, Docket, p. 722-724.
[30] Docket, pp. 731-748.
[31] Docket, pp. 781-787.
[32] TSN taken on October 1, 2012 and November 12, 2012.
[33] TSN taken on February 6, 2013.

that she was also the one who filed their ITR for 1992. Accused spouses left for the US after 1992, but when they returned in 1997, she again filed their ITR from that time up to taxable year 2009. All in all, she filed the accused spouses' ITRs with the BIR for fifteen (15) taxable years.

Ms. Roxas testified that she was the one who personally filed the 2009 Joint ITR of accused spouses with the BIR Makati on April 12, 2010. Ms. Roxas narrated that on the said date, she was filing a number of ITRs that she prepared for other friends and the first RDO she went to was RDO No. 47, so she had all the ITRs that she was going to file in Makati received in RDO No. 47, as it had always been their practice since when she was assigned to RDO Makati to accept all out-of-district returns so long as they belong to the same Revenue Region of Makati. According to Ms. Roxas, all the ITRs were accepted by the receiving agent of the BIR. Ms. Roxas likewise stated that she did not notice the absence of the name of the receiving agent of the BIR in the stamp mark appearing in the accused spouses 2009 Joint ITR and after receiving the stamp marked 2009 Joint ITR of the accused spouses, she dropped it off in the house of the accused.

After learning that the accused spouses were being audited by the BIR for their income tax for taxable year 2009, she immediately visited the assigned examiner, Adelina See, and the latter asked Ms. Roxas for a copy of the accused spouses' 2009 Joint ITR. However, she learned through the newspaper that the BIR claimed to have no records of the accused spouses' 2009 Joint ITR after the BIR held a press conference sometime in January 2011 declaring the filing of a tax evasion case against the accused. Ms. Roxas went back to Adelina See and the latter told Ms. Roxas that there is nothing that can be done and to just look for a tax lawyer.

Ms. Roxas also maintained that in the years that she had been preparing and filing the ITRs of the accused, aside from 2009, she had no problems with any other ITRs that she filed for them in the prior years. According to Ms. Roxas, the accused spouses have full faith and trust in her to prepare and file their ITRs not only because of their close family relationship but more so because of her 40 years of experience in the BIR.[34]

[34] Exhibit "5".

On cross-examination, Ms. Roxas testified that while she prepares and files the ITRs of the accused and some of her friends and relatives, she does not have accreditation as a tax agent or practitioner to prepare the ITRs of the accused spouses since she is not a CPA and despite being aware of the Revenue Regulation that requires an accreditation of those engaged in the regular preparation and filing of tax returns before any office of the BIR on behalf of the taxpayer even without consideration. Furthermore, Ms. Roxas testified that she personally handed to the receiving officer authorized by the RDO the ITRs including the alleged 2009 ITR of the accused spouses. She added that she verified from RDO Nos. 47 and 49 if indeed the 2009 ITR of the accused was not in their records.[35]

Another witness for the defense, Mr. Aris G. Lazarte, testified by way of Judicial Affidavit, that he was referred to the accused spouses by Ms. Roxas to help them prepare and file their monthly and quarterly VAT returns as well as to pay the tax due, if any, on the said returns. He started helping the accused prepare and file their VAT Returns since 2005. According to Mr. Lazarte, he personally filed the January to December 2009 VAT Returns of accused spouses. When there is a tax due, Mr. Lazarte would file the VAT returns at the Development Bank of the Philippines, Atrium Branch in Makati City on the respective dates indicated in the DBP Stamp Mark Received stamped on the said returns which were paid using the personal check issued by the accused Ma. Teresa Chan Castillo. On the other hand, the VAT returns where there are no taxes due were filed with RDO No. 49-North Makati on the respective dates indicated in the RDO No. 49 Stamp Mark Received stamped on the said returns.[36]

During cross-examination, Mr. Lazarte answered that he is not aware that for a person to be authorized to prepare and sign on behalf of a taxpayer, that person needs to have a BIR Tax Accreditation Number. He also stated that the accused spouses gave him one thousand pesos per month for filing their returns.[37]

The defense likewise presented documentary evidence marked as Exhibits "1" to "6-A", which were admitted in evidence as per this Court's Resolution dated March 14, 2013[38]; with the exception of

[35] TSN taken on November 12, 2012.
[36] Exhibit "6".
[37] TSN taken on February 6, 2013, pp. 16-25.
[38] Docket, pp. 989-990.

Exhibits "1-A", "1-B", "1-C", "1-D", "1-E", "1-F", "1-G", "1-H", "1-I", "1-J", "1-K", "1-L", "1-M", "1-N", and "1-O" for failure of the defense to submit the original documents for comparison.

Subsequently, the prosecution submitted its Memorandum on July 4, 2013[39]; while the Accused's Memorandum[40] was filed on July 23 2013. Thus, on July 26, 2013, a Resolution[41] was issued by this Court submitting the case for decision.

ISSUE TO BE RESOLVED

Whether or not the accused spouses are guilty of violating the first paragraph of Section 255 of the NIRC of 1997, as amended, for failure to file their income tax return for taxable year 2009.

THIS COURT'S RULING

First, it must be borne in mind that an accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[42]

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[39] Docket, pp. 1015-1033.
[40] Docket, pp. 1038-1062.
[41] Docket, p. 1064.
[42] *Boac, et al. vs. People of the Philippines*, G.R. No. 180597, November 7, 2008, 570 SCRA 533 citing *People of the Philippines vs. Ganguso*, G.R. No 115430, November 23, 1995, 250 SCRA 268.

The offense allegedly committed by herein accused is the violation of the first paragraph of Section 255 of the NIRC of 1997, as amended, which 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.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who **willfully fails to pay such tax, make such return,** keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." *(Emphasis supplied)*

Based on the above-mentioned provision and on the Information filed against the accused spouses, the following elements must be established:

1. That the accused spouses are required to make or file a return;

2. That accused spouses failed to make or file the return at the time required by law; and

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

The accused spouses are required to make or file a return

As to the first element, it is necessary to determine who are those required to file a return and declare income tax. In this regard, this Court found instructive Sections 51(A) and (D) and 74(A) in connection with Section 32(A) of the NIRC of 1997, as amended.

"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;

(b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;

(c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and

(d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

(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**;

(b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided,* That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: *Provided, further,* That an individual whose compensation income derived from sources within the Philippines exceeds Sixty thousand pesos (P60,000) shall also file an income tax return;

(c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and

(d) An individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special.

(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;

(b) A nonresident citizen - on his income derived from sources within the Philippines;

(c) A resident alien - on his income derived from sources within the Philippines; and

(d) A nonresident alien engaged in trade or business in the Philippines - on his income derived from sources within the Philippines.

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(D) *Husband and Wife.* – Married individuals, whether citizens, resident or nonresident aliens, who do not derive income purely from compensation, shall file a return for the taxable year to include the income of both spouses, but where it is impracticable for the spouses to file one return, each spouse may file a separate return of income but the returns so filed shall be consolidated by the Bureau for purposes of verification for the taxable year." *(Emphasis supplied)*

"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**;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership." *(Emphasis supplied)*

It is clear from the foregoing that the prosecution is tasked to establish the fact that the accused spouses are among those required to file a return on their income for taxable year 2009 and that the accused spouses are not among those exempted from filing the same.

First, it must be emphasized that it was admitted by the parties that accused spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo are Filipino citizens and that both are registered with RDO No. 49-North Makati with Taxpayer Identification Nos. 128-829-651 and 136-898-445, respectively. Likewise, it was admitted that accused Dr. Vicente Gana Castillo is a doctor of medicine and a plastic surgeon by profession, while accused Dr. Ma. Teresa Chan Castillo is a doctor of medicine and a pathologist by profession.[43] The parties also stipulated that the amount of P7,431,816.00 for the year 2009 was paid by Asian Hospital Medical Center to the accused Dr. Ma. Teresa Chan Castillo.[44] Furthermore, the prosecution presented the following:

[43] Pre-Trial Order dated February 20, 2012, Docket, pp. 247-248.
[44] TSN taken on April 25, 2012.

1. Certification dated January 11, 2011 issued by Theophil Seiler, Chief Executive Officer of Asian Hospital and Medical Center, stating that Asian Hospital, Inc. made income payments to Ma. Teresa Chan Castillo amounting to P7,431,816.00 only for the year 2009;[45]

2. Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) of Ma. Teresa Chan Castillo for the periods January 1, 2009 to March 31, 2009[46], April 1, 2009 to June 30, 2009[47], July 1, 2009 to September 30, 2009[48] and October 1, 2009 to December 31, 2009[49], all of which were issued by Asian Hospital, Inc.; and

3. Print-out of details of income payments made to accused spouses extracted from Third Party Information.[50]

From the foregoing, the prosecution was able to show that accused spouses are Filipino citizens, residing in the Philippines, are registered taxpayers, and have earned substantial income during taxable year 2009. Thus, it is clear that the accused spouses belong to those individuals required by law to file their income tax return.

The accused spouses failed to make or file the return at the time required by law

Section 51(B) and (C)(1) of the NIRC of 1997, as amended, also provides for the venue for the filing of the required income tax return and the period within which to file the same, to wit:

[45] Exhibit "L".
[46] Exhibit "L-1".
[47] Exhibit "L-2".
[48] Exhibit "L-3".
[49] Exhibit "L-4".
[50] Exhibit "HH-1".

"SEC. 51. *Individual Return.* -

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(B) *Where to File.* - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) *When to File.* -

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year."

As previously mentioned, accused spouses Vicente Gana Castillo and Ma. Teresa Chan Castillo are registered with RDO No. 49-North Makati with Taxpayer Identification Nos. 128-829-651 and 136-898-445, respectively. However, the witness for the accused spouses, Ms. Carmencita Roxas, testified that she filed the ITR of accused spouses for taxable year 2009 with RDO No. 47-East Makati, as it had been their practice since when she was assigned to RDO Makati to accept all out-of-district returns so long as they belong to the same Revenue Region of Makati.[51]

On the other hand, the prosecution presented the following to establish the second element:

1. The Certification dated January 26, 2011 issued by Ms. Cynthia E. Potian, the OIC-Chief of the Document Processing Section of **RDO No. 49-North Makati, stating that accused Ma. Teresa C. Castillo has no record of income tax return** (BIR Form No. 1701) **filed for the year 2009**;[52]

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[51] Exhibit "5".
[52] Exhibit "E".

2. The Certification dated January 26, 2011 issued by Ms. Cynthia E. Potian, stating that **accused Vicente G. Castillo has no record of income tax return filed for the year 2009**;[53] and

3. The Certification dated January 12, 2011, issued by Mr. Gerry. O. Dumayas, Revenue District Officer of **RDO No. 47-East Makati**, stating that **his office has no record of the income tax return(s) for 2009 of spouses Vicente G. Castillo and Ma. Teresa C. Castillo** and that the rubber stamps used by the district when receiving 2009 ITRs during the last filing season bore the complete names of the receiving personnel. It was further stated that the rubber stamp impressions on the subject ITR and attachments show no such information.[54]

Even though Ms. Roxas testified that she filed the Joint ITR for 2009 of the accused spouses, the evidence presented by the prosecution would show that there is no record of accused spouses' ITR for 2009 in RDO No. 47-East Makati, where Ms. Roxas allegedly filed the said ITR, as well as in RDO No. 49-North Makati, where the accused spouses were registered. This was further bolstered by the fact that the purported stamp of the BIR in the alleged Joint ITR of the accused spouses for 2009 is incomplete as the same does not bear the name or initial of the revenue officer who received the said ITR.

It must be noted that during the hearing held on October 1, 2012, Ms. Roxas testified that she was previously assigned in RDO No. 47 for nine (9) years and she has so many friends there. She further narrated that she was accommodated by her friends and helped her file the returns of her friends, one of which was the purported ITR of the accused spouses. According to Ms. Roxas, her friends from RDO No. 47 accommodated her and they filed the return with their receiving clerk. And while it is being stamped, she was talking to her other friends. After a while, they gave Ms. Roxas the return. Ms. Roxas likewise failed to identify the representative of the BIR who received the alleged Joint ITR of the accused spouses for 2009.[55] However, during the cross-examination of Ms. Roxas on

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[53] Exhibit "F".
[54] Exhibit "J".
[55] TSN taken on October 1, 2012, pp. 10-11.

November 12, 2012, she said that she personally handed to the receiving officer authorized by the RDO the ITRs, including the alleged 2009 ITR of the accused spouses. She further testified that she did not notice the absence of the name of the receiving agent in the stamp mark of the 2009 ITR of the accused spouses but only noticed that it was stamped received.[56]

It appears from the testimony of Ms. Roxas that there was irregularity in her filing of the purported Joint ITR of the accused spouses for 2009. The Court cannot give evidentiary weight to the testimony of Ms. Roxas that the Joint ITR of the accused spouses for 2009 was actually filed by her with RDO No. 47 considering Ms. Roxas' testimony that her friends from RDO No. 47 filed the return with their receiving clerk and that she failed to personally ensure the actual filing of the same.

Based on the foregoing pieces of evidence presented by the prosecution and the testimony of the accused spouses' witness, it is clearly established that accused spouses failed to file their income tax return for taxable year 2009 with the RDO where they are registered, which is RDO No. 49-North Makati, or the RDO where the ITR prepared by Ms. Roxas was purportedly filed, which is RDO No. 47-East Makati.

That the accused willfully failed to make or file the return was not proven

According to the prosecution, willfulness is inferred from the conduct of the erring taxpayer. Citing the case of *Spies vs. United States*, the prosecution argues that the U.S. Supreme Court, "by way of illustration and not by way of limitation", declared the following as examples of conduct from which willfulness may be inferred:

> "...keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the

[56] TSN taken on November 12, 2012, pp. 11-12.

kind, and any conduct, the likely effect of which would be to mislead or to conceal."

The prosecution noted the Court's reference to "any conduct, the likely effect of which would be to mislead or to conceal". It is apparent that the Court was intent on making it clear that there are no artificial limits on the type of conduct from which willfulness can be inferred, and that evidence is admissible of any conduct at all, as long as the "likely effect" of the conduct would be to mislead or conceal.

The prosecution averred that accused spouses willfully failed to file their 2009 ITR, and to conceal this fact, they produced an allegedly filed ITR.

Disputing the existence of an allegedly filed 2009 ITR of the accused spouses, which heavily relied on the impression of a BIR stamp marking "RECEIVED" by RDO No. 47, the prosecution alleged that its evidence has already certified that the rubber stamps used by the district when receiving 2009 ITRs during the last filing season bore the complete names of the receiving personnel. On the other hand, the rubber stamp impression on the alleged ITR and attachments filed by the accused spouses in the said district show no such information.

According to the prosecution, aside from the negative certifications issued by RDO No. 47, where the accused spouses claim to have filed the ITR, as well as the RDO where they are registered taxpayers, there are testimonies made by witnesses proving that the accused spouses did not personally file their 2009 ITR. Having left the responsibility of a personal obligation to another person, accused spouses cannot now deny the act or omission leading to the non-filing of their 2009 ITR.

Likewise, the prosecution, adopting the decisions rendered in the case of *People of the Philippines vs. Gloria V. Kintanar*[57], *People of the Philippines vs. Benjamin G. Kintanar*[58], *and People of the Philippines vs. Joel C. Mendez*[59], alleged that granting that accused spouses believed that their 2009 Joint ITR was correctly filed, the

[57] CTA Crim. Case Nos. O-033 and O-034, August 26, 2009.
[58] CTA Crim. Case No. O-030, August 11, 2010.
[59] CTA Crim. Case No. O-013 and O-015, January 5, 2011.

same does not negate the established fact that their failure to file their income tax return is willful. Despite having a tax agent tasked to prepare and file their income tax returns, this does not remove their responsibility as taxpayers to ensure that there was proper filing. Such continuous refusal or failure of accused spouses to verify their compliance with their tax obligation constitutes "willful blindness" on their part.

On the other hand, accused spouses contended that they are entitled to a tax refund and that the prosecution's computation of damage to government is faulty. Accused spouses maintained that the prosecution failed to recognize the legitimate business expenses, reported in accused spouses' VAT returns, which expenses were investigated, verified and allowed by BIR examiners for VAT purposes. If business expenses were recognized, accused spouses are entitled to a tax refund. Thus, accused spouses believe that the same should negate or disprove the fraudulent intent to not file their ITR.

The accused spouses also interposed the following grounds to negate the alleged fraudulent intent to not file their ITR:

1. Accused spouses' witness Carmencita Roxas testified that she had personally filed on behalf of the accused spouses their Joint ITR for the fifteen (15) taxable years that they practiced their medical profession here in the Philippines and that accused spouses have never had any complaint filed against them for non-filing of ITR.

2. How can there be willful intent on the part of accused spouses to not file their 2009 Joint ITR when the undisputed fact is that they reported their income to the BIR by filing regularly their monthly and quarterly VAT returns for 2009 and making output VAT payments.

3. Accused spouses 2009 Joint ITR, with gross income amounts of P976,224.00 and P8,165,345.00, provides for a tax refund. Why then prepare an ITR for a tax refund if there was no intention in the first place of filing the same? gr

4. The accused spouses cannot be charged of "willful blindness" based on what the prosecution will argue to be the improper filing of their Joint ITR in RDO No. 47-East Makati instead of RDO No. 49-North Makati where the accused are registered, considering that Section 51(b) of the NIRC of 1997 allows the filing of Individual Tax Returns with the RDO of the city or municipality where the taxpayer has his legal residence or principal place of business.

5. Ms. Carmencita Roxas, a former BIR Group Supervisor of Makati, with over 40 years of experience in the BIR, has been filing their Joint ITRs for fifteen (15) taxable years. Why would accused have any reasonable doubt on the proper filing by Ms. Roxas of their 2009 Joint ITR considering what appeared as original BIR Stamp Mark on their copy of their ITR.

6. When BIR on December 14, 2010 required accused spouses to submit their 2009 Joint ITR, as testified to by Ms. Roxas, she gave a copy of the ITR willingly. Why would accused knowingly present an ITR with an alleged fake stamp mark to the BIR if they were not 100% confident that the ITR was filed on April 12, 2010?

In determining whether the non-filing of the ITR was done willfully, the Court is mindful of the fact that the burden of proof is on the prosecution to show beyond reasonable doubt that the accused spouses are guilty of the crime charged.

As previously mentioned, the prosecution averred that accused spouses willfully failed to file their 2009 ITR, and to conceal this fact, they produced an allegedly filed ITR. The prosecution likewise argued that the accused spouses, having left the responsibility of a personal obligation to another person, they cannot now deny the act or omission leading to the non-filing of their 2009 ITR.

While the prosecution was able to prove that RDO No. 47-East Makati and RDO No. 49-North Makati have no record of the accused spouses Joint ITR for 2009, and that it was certified by the BIR officer that "the rubber stamps used by the district when receiving

2009 ITRs during the last filing season bore the complete names of the receiving personnel. On the contrary, the rubber stamp impression on the alleged ITR and attachments filed by the accused spouses in the said district show no such information", the prosecution still failed to prove that the purported ITR for 2009 was produced to conceal the accused spouses' non-filing of their ITR.

Also, the fact that the accused spouses delegated their obligation to another in the filing of their ITR for 2009 does not establish the existence of the element of willfulness.

It must be noted that 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**.[60]

In the case of *People of the Philippines vs. Estelita Delos Angeles*[61], this Court defined the term "willful" in this wise:

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

In this case, there was nothing in the evidence presented by the prosecution which would show that the accused spouses intentionally failed to file their ITR by delegating the filing with Ms. Roxas considering that Ms. Roxas has been the one filing their ITRs on their behalf for 15 years and that they had no problem with the filing of their ITRs until the filing of the instant criminal case for the alleged non-filing of their ITR for 2009. Also, while it appears that

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[60] Black's Law Dictionary, 6th Ed., p. 1599.
[61] CTA Crim. Case No. O-027, November 25, 2009.

the purported ITR of the accused spouses for 2009 was not found in the records of RDO Nos. 47 and 49 of Makati, the testimony of Ms. Roxas was able to establish the fact that, in handling the receiving copy of the purported ITR of the accused spouses for 2009, the accused spouses believed that they had already filed their ITR for 2009.

Moreover, it can be inferred from the testimony of Ms. Roxas that she was only negligent in having the purported ITR received by the BIR considering that she failed to personally handover the ITR of the accused to the receiving clerk and that she failed to check the receiving stamp placed in the purported receiving copy of the ITR. Thus, while the fact that the accused spouses delegated their personal obligation to another in the filing of their ITR for 2009 and that the accused spouses cannot now deny the act or omission leading to the non-filing of their 2009 ITR, the Court can only impute the negligence of the agent to be the negligence of the accused spouses in the filing of their ITR for 2009.

In the case *of People of the Philippines vs. Judy Anne Santos y Lumagui*[62], accused therein was acquitted after finding that the accused is negligent; and such is not enough to convict her. The element of willfulness was not proven in the said case.

On the other hand, it can be argued that despite having a tax agent tasked to prepare and file the accused spouses' income tax returns, this does not remove their responsibility as taxpayers to ensure that there was proper filing. According to the prosecution, such continuous refusal or failure of accused spouses to verify their compliance with their tax obligation constitutes "willful blindness" on their part.

"Willful Blindness" is defined by Black's Law Dictionary 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." It "creates an inference of knowledge of the crime in question."[63] gr

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[62] CTA Crim. Case No. O-012, January 16, 2013. In the Minute Resolution of the Supreme Court Second Division in G.R. No. 206001 *(People of the Philippines v. Court of Tax Appeals and Judy Anne Santos y Lumagui)* dated April 17, 2013, Petition for Certiorari was dismissed.

[63] *People of the Philippines vs. Benjamin G. Kintanar*, CTA Crim. Case No. O-030, August 11, 2010 citing Black's Law Dictionary, Eighth Edition, p. 1630.

In order to prove the existence of "willful blindness", two requirements must be satisfied:

1. the accused must subjectively believe or is aware that there is a high probability that a fact exists or that there exists a suspected wrongdoing; and

2. the defendant must take deliberate actions to avoid learning of that fact.

As to the first requirement that the accused must subjectively believe or is aware that there is a high probability that a fact exists or that there is a suspected wrongdoing, the prosecution failed to establish the same. The prosecution failed to present any documentary or testimonial evidence which would show that the accused spouses were aware that it is highly probable that their Joint ITR for 2009 was not filed. Furthermore, unlike in the cases of *People of the Philippines vs. Gloria Kintanar*[64] and *People of the Philippines vs. Benjamin Kintanar*[65], there was no admission on the part of the accused spouses that they failed to inquire or determine the facts surrounding the filing of their Joint ITR for 2009.

In this case, the prosecution's allegation that the accused spouses continuously refused or failed to verify their compliance with their tax obligation was not supported by any testimonial or documentary evidence on the record. The prosecution likewise failed to present circumstantial evidence to support the argument.

On the other hand, it can also be observed that there was nothing in the evidence presented by the accused spouses which would show that they made a reasonable inquiry on the filing by Ms. Roxas of their Joint ITR for 2009 on their behalf. Nevertheless, it can be inferred from the evidence of the accused spouses that they would not have suspected that the subject ITR was not filed or that the non-filing of the same was highly probable considering that Ms. Roxas, a former BIR Group Supervisor of Makati with over 40 years of experience in the BIR, has been filing their Joint ITRs for fifteen taxable years, and that a stamp received by the BIR appears on the face of their copy of the Joint ITR for 2009, which was furnished to

[64] CTA Crim. Case Nos. O-033 and O-034, August 26, 2009.
[65] CTA Crim. Case No. O-030, August 11, 2010.

them by Ms. Roxas after having the alleged copy of the BIR of the said Joint ITR for 2009 received by RDO No. 47-East Makati.

There was likewise no evidence presented by the prosecution which would indicate that the accused was previously delinquent in filing their ITR for the previous years which may hint that the accused spouses might have been aware that the non-filing of their ITR for 2009 was highly probable and that they continuously refused to verify their compliance with their tax obligations.

Also, considering that the accused Dr. Vicente Gana Castillo is a doctor of medicine and a plastic surgeon by profession and accused Dr. Ma. Teresa Chan Castillo is a doctor of medicine and a pathologist by profession, which are not in any way related to the tax or accounting practice, they are not expected to have known that there was an irregularity in the filing of the return or to be suspicious as to whether the purported ITR was filed in the proper venue since the said return for 2009 appeared to have been filed in the same Revenue Region where the accused spouses are registered and are residents, which is in Makati, and also in view of Ms. Roxas' belief that the filing of the ITR with RDO No. 49 may be filed with RDO No. 47 as it had been their practice before when she was assigned to RDO Makati to accept all out-of-district returns so long as they belong to the same Revenue Region of Makati or to be fully accustomed with the receiving stamp of the RDO where the Joint ITR for 2009 was allegedly filed.

From the foregoing, it is apparent that there is no competent or sufficient evidence which would show that the failure of the accused spouses to file their ITR for 2009 was willful.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[66]

The necessity for proof beyond reasonable doubt lies in the fact that "(i)n a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel usually of

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[66] *Boac, et al. vs. People of the Philippines*, G.R. No. 180597, November 7, 2008, 570 SCRA 533.

authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt."[67]

Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[68]

There is clearly a reasonable doubt as to the accused spouses' guilt in this case. And since their constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt, the accused must then be acquitted even though their innocence may be doubted.[69] Therefore, considering that the prosecution failed to prove the guilt of the accused spouses beyond reasonable doubt, the accused spouses Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo should be acquitted of the offense charged.

With regard to the civil aspect of this case, the same is deemed simultaneously instituted pursuant to Section 7(b)(1) of Republic Act No. 9282, which provides that "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."

The prosecution alleged that the government was deprived of the estimated deficiency income taxes in the amount of P2,915,253.07 because of the non-filing of the accused spouses' ITR for income earned and received for taxable year 2009, the details of which are as follows:

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[67] *People of the Philippines vs. Supt. Reynaldo Berroya, SPO4 Jose Vienes and Francisco Mateo,* G.R. No. 122487, December 12, 1997, 283 SCRA 111.

[68] *Violeta Bahilidad vs. People of the Philippines,* G.R. No. 185195, March 17, 2010, 615 SCRA 597.

[69] *Pecho vs. People of the Philippines, et al.*, G.R. No. 111399, September 27, 1996, 262 SCRA 518; *People of the Philippines vs. Baulite, et al.*, G.R. No. 137599, October 8, 2001, 366 SCRA 732.

Income per Third Party Information (Asian Hospital)		P7,431,816.00
Income per ITR		-
Taxable Income before exemption		7,431,816.00
Less: Personal Exemption		50,000.00
Taxable Income per BIR Investigation		7,381,816.00
Income Tax Due		
First P500,000.00	125,000.00	
Excess of P500,000.00 at 34%	2,339,817.44	2,464,817.44
Less: Creditable Withholding Tax		1,060,882.15
Basic Income Tax Due		1,403,935.29
Add: 50% Surcharge	701,967.65	
20% interests (4/16/2010 – 6/30/11)	339,252.31	1,041,219.96
Total Deficiency Income Tax of Dr. Ma. Teresa C. Castillo		**P2,445,155.25**
Taxable Medical Fees per VAT Returns		P976,224.00
Less: Income declared per VAT returns		-
Taxable Income before exemption		976,224.00
Less: Personal Exemption		50,000.00
Taxable Income per BIR Investigation		926,224.00
Income Tax Due		
First P500,000.00	125,000.00	
Excess of P500,000 at 34%	144,916.00	269,916.16
Less: Creditable Withholding Tax		-
Basic Income Tax Due		269,916.16
Add: 50% Surcharge	134,958.08	
20% interests (4/16/2010 – 6/30/11)	65,223.58	200,181.66
Total Deficiency Income Tax of Dr. Vicente Gana Castillo		**P470,097.82**

In the case of *Ungab vs. Cusi*[70], the Supreme Court said:

> "While **there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed**, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code." *(Emphasis supplied)*

Plainly, an assessment of the tax before there can be a criminal prosecution is not necessary. Whereas, in case of a civil action for collection of the tax, the assessment procedures provided by the NIRC of 1997, as amended, should be satisfied.

Furthermore, let this Court cite the provision of Section 205 of the NIRC of 1997, as amended, which reads in part:

[70] G.R. Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* - xxx
>
> xxx xxx xxx
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner."

In this case, the civil liability sought to be determined is the civil liability provided under the afore-mentioned section. To reiterate, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner as to the tax liability is necessary in order for the Court to rule on the civil liability. While it can be argued that the Commissioner, in a letter referring the case for preliminary investigation and filing of an information, mentioned of the civil liability of the accused spouses amounting to P2,915,253.07 for failure to file income tax return for income earned and received for taxable year 2009[71], the prosecution's witnesses testified that there were Formal Letters of Demand issued against accused spouses for their tax liability for taxable year 2009. The accused spouses alleged that their protest is still pending resolution of the Commissioner, which was corroborated by the testimony of the prosecution's witness Ms. Emerita Tan[72]. Clearly, there is still no final decision by the Commissioner as to the income tax liability of the accused spouses.

Similarly, as admitted by the witness for the prosecution, the BIR failed to consider the deductible expenses from which the input VAT were recognized for taxable year 2009 as deductible business expense which might have lessened or totally offset the accused spouses' income tax liability.

In this regard, it must be emphasized that while the Commissioner has the power to assess the proper tax on the best evidence obtainable as provided under Section 6(B) of the NIRC of 1997[73], the same should not be exercised arbitrarily and capriciously.

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[71] Exhibit "O".
[72] TSN taken on March 14, 2012, p. 82.
[73] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
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In the case of *Commissioner of Internal Revenue vs. Hantex Trading Co. Inc.*[74], the power of the Commissioner to issue an assessment based on the best evidence obtainable was elaborated as follows:

> "The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*
>
> In *Campbell, Jr. v. Guetersloh*, the United States (U.S.) Court of Appeals (5th Circuit) declared that it is the duty of the Commissioner of Internal Revenue to investigate any circumstance which led him to believe that the taxpayer had taxable income larger than reported. Necessarily, this inquiry would have to be outside of the books because they supported the return as filed. He may take the sworn testimony of the taxpayer; he may take the testimony of third parties; he may examine and subpoena, if necessary, traders' and brokers' accounts and books and the taxpayer's book accounts. The Commissioner is not bound to follow any set of patterns. The existence of unreported income may be shown by any practicable proof that is available in the circumstances of the particular situation. Citing its ruling

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(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the **best evidence obtainable.**
In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.

[74] G.R. No. 136975, March 31, 2005, 454 SCRA 301.

in *Kenney v. Commissioner*, the U.S. appellate court declared that where the records of the taxpayer are manifestly inaccurate and incomplete, the Commissioner may look to other sources of information to establish income made by the taxpayer during the years in question.

xxx xxx xxx

The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. **However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously**." *(Emphasis supplied)*

To reiterate, while the Commissioner has the power to assess petitioner on the best evidence obtainable and may resort to the exercise of its powers under Section 5 of the NIRC and to approximation in the calculation of the taxes due, the same should not be arrived at arbitrarily and capriciously.

Ms. Tan testified that she is familiar with the Formal Letter of Demand dated December 19, 2011 issued against accused Ma. Teresa Chan Castillo and that in the FLD, she had allowed an input tax of P441,925.11 to be deducted from the output tax of the accused.[75] This was corroborated by the testimony of Ms. See.[76] Ms. Tan also testified that based on the FLD issued to accused Vicente Gana Castillo dated December 19, 2011, the only tax deficiency of Vicente Gana Castillo would be on income tax and that he has no VAT deficiency. She said that she allowed the output taxes (input taxes) that he declared in his VAT returns.[77]

While it was said that in computing accused Ma. Teresa Chan Castillo's tax liability, most of the expenses claimed under the VAT

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[75] TSN dated March 14, 2012; pp. 51-54.
[76] TSN taken on March 21, 2012, p. 18.
[77] TSN dated March 14, 2012, pp. 79-81.

return are capital expenses and some are insurance that are considered as investment[78]; and that the input tax for a cost such as an asset will not be allowed as deduction considering that the same are capital assets and not all amount is deductible[79], still it can be inferred that the Revenue Officers actually disregarded the possibility that the said input VAT can be considered in determining the deductible expenses of accused Ma. Teresa Chan Castillo. The same is true with the determination of the tax liability of accused Vicente Gana Castillo wherein Ms. Tan testified that she allowed the output taxes (input taxes) that he declared in his VAT returns[80] without taking into consideration the said input taxes in determining the deductible expense of accused Vicente Gana Castillo. Moreover, Ms. See testified that they did not review the VAT returns of Vicente Gana Castillo despite being given copies of his VAT returns.[81]

The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.[82] On the other hand, Expenses, such as Ordinary and Necessary Trade, Business or Professional Expenses, are among the allowable deductions from gross income enumerated under Section 34 of the NIRC of 1997, as amended. Under the said provision, there shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or the conduct of the trade, business or exercise of a profession.

Clearly, the deductible expenses from which the input VAT are recognized and allowed to be credited to accused spouses' output VAT may be considered as expenses incurred in the course of their trade or business which, after compliance with the substantiation requirements under Section 34(A)(1)(b) of the NIRC of 1997, as amended, can be considered to be expenses directly attributable to the accused spouses' conduct of the trade, business or exercise of a profession, which expenses can be deducted from the gross income.

[78] TSN taken on March 21, 2012, p. 22.
[79] TSN dated March 14, 2012, pp. 88-89.
[80] TSN dated March 14, 2012, p. 81.
[81] TSN taken on March 21, 2012, pp. 28-31.
[82] Section 110(A), Republic Act No. 9337.

Since the revenue officer failed to consider the deductible expenses from which the input VAT of the accused spouses are recognized in determining the civil liability of the accused spouses, which can possibly be a business expense deductible from the alleged income tax liability, the estimation presented by the prosecution is considered to have been arrived at arbitrarily and capriciously. Thus, the computation presented by the prosecution may not be a basis for the determination of the accused spouses' civil liability.

Moreover, it is noted that no assessment was presented and offered as evidence by the prosecution before the court to prove the civil liability of the accused spouses.

WHEREFORE, premises considered, accused spouses **Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo** are hereby **ACQUITTED** of the crime charged.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
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

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