REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JUAN MIGUEL M. ARROYO,
Accused.

CTA Crim. Case No. O-247

For: Failure to Supply Correct and Accurate Information under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JUAN MIGUEL M. ARROYO,
Accused.

CTA Crim. Case No. O-248

For: Failure to Supply Correct and Accurate Information under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JUAN MIGUEL M. ARROYO,
Accused.

CTA Crim. Case No. O-249

For: Failure to File Income Tax Return under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.

Members:

Del Rosario, *P.J., Chairperson,*
Uy, *and*
Mindaro-Grulla, *JJ.*

Promulgated:
MAR 21 2018 ; 8:45a.m.

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DECISION

DEL ROSARIO, P.J.:

These consolidated cases involve three (3) separate Informations filed on October 6, 2011 against accused Juan Miguel M. Arroyo, docketed as CTA Crim. Case Nos. O-247, O-248 and O-249.

Accused is charged before this Court for failure to supply correct and accurate information under Sections 24 (Income Tax on Individuals), 51(A)(1)(a)[1] in relation to Section 255[2] of the National Internal Revenue Code (NIRC) of 1997, as amended in CTA Crim. Case Nos. O-247, and O-248, and for failure to file an income tax return under the same provisions of the NIRC in CTA Crim. Case No. O-249. The accusatory portion of the three (3) Informations read as follows:

Crim. Case No. O-247

> "That on or about **April 15, 2005**, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, willfully, unlawfully and

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[1] SECTION 51. *Individual Return.* -
xxx xxx xxx
(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
(a) Every Filipino citizen residing in the Philippines; xxx.

[2] SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused substantially under declared his income for taxable year 2004 which resulted to basic deficiency income tax of **₱21,717,225.56** for taxable year **2004** exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[3]

xxx xxx xxx

Crim. Case No. O-248

"That on or about **April 15, 2007**, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, wilfully, unlawfully and substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused substantially under declared his income for taxable year 2006 which resulted to basic deficiency income tax of **₱3,457,960.00** for taxable year **2006** exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[4]

xxx xxx xxx

Crim. Case No. O-249

"That on or about **April 15, 2008**, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return for income earned for taxable year 2007 did, then and there, wilfully, unlawfully and feloniously fail to make and refuse to file his annual income tax return which resulted to basic deficiency income tax of **₱2,130,129.50** for taxable year **2007** exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[5]

Juan Miguel M. Arroyo, the accused, is a Filipino citizen with residential address at 15 Badjao Street, La Vista Subdivision, Katipunan, Quezon City. He and his wife, Ma. Angela Montenegro Arroyo, were married on June 23, 2002. He is a registered taxpayer of Revenue District Office No. 39, South Quezon City with Taxpayer's

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[3] CTA Crim. Case No. O-247 Docket, pp. 4-5.
[4] CTA Crim. Case No. O-248 Docket, pp. 4-5.
[5] CTA Crim. Case No. O-249 Docket, pp. 6-7.

Identification Number (TIN) 914-841-267-000. He was the Vice-Governor of Pampanga for years 2001 to 2004, and was later elected as Congressman for the 2nd District of Pampanga for two (2) consecutive terms from 2004 to 2010.[6]

Accused declared in his Statement of Assets Liabilities and Networth (SALN) as of December 31, 2001 the following:[7]

Cash in Bank/Cash on Hand	Php 2,608,922.62
Shares of Stock	2,144,101.17
Jewelry, Watches, Clothes, Other Personal Effects	250,000.00
Total Assets	5,003,023.79
Total Net Worth	5,003,023.79

In his Annual Income Tax Return (ITR) for taxable year 2003, accused declared his compensation, business, professional related income in the total amount of Php1,063,300.28.[8]

Accused declared in his SALN as of December 31, 2004 the following:[9]

Cash in Bank/ Cash on Hand	Php13,750,970.30
Shares of Stock/Club Shares	25,880,433.66
Jewelry, Clothes, Other Personal Effects	18,000,000.00
House and Lot (Lubao, Pampanga acquired in 2004)	4,000,000.00
Residential House & Lot (La Vista Subd., QC acquired in 2004)	8,000,000.00
Motor Vehicles	5,900,000.00
Furniture, Appliances & Other Fixtures	1,000,000.00
Total Assets	76,531,403.96
Total Net Worth	76,531,403.96

Accused and his spouse declared in their Joint Annual ITR for taxable year 2004 as their taxable income the amount of P2,489,375.00.[10]

[6] Pre-Trial Order (PTO), CTA Crim. Case No. O-247 Docket, p. 754.
[7] PTO, CTA Crim. Case No. O-247 Docket, p. 754.
[8] PTO, CTA Crim. Case No. O-247 Docket, p. 754.
[9] PTO, CTA Crim. Case No. O-247 Docket, p. 755.
[10] PTO, CTA Crim. Case No. O-247 Docket, p. 755.

Accused declared in his SALN as of December 31, 2005 the following:[11]

Cash in Bank/Cash on Hand	Php14,170,970.30
Investments in Stocks (Paid-Up Capital)	25,880,433.66
Residential House and Lot (Lubao, Pampanga acquired in 2004)	4,000,000.00
Improvement in La Vista Subd.	15,000,000.00
Residential House (La Vista Subd., QC acquired in 2004)	8,000,000.00
Residential House (US acquired in 2005 installment sale)	49,500,000.00
Motor Vehicles	5,900,000.00
Household Furniture & Other Fixtures	6,800,000.00
Total Assets	138,751,403.96
Personal Loan from Relatives	27,150,000.00
Installment Payable (from purchase of house)	34,650,000.00
Total Liabilities	61,800,000.00
Total Net Worth	76,951,403.96

Accused and his spouse declared in their Joint Annual ITR for taxable year 2005 as their Gross Taxable Compensation Income the amount of Php378,000.00.[12]

Accused declared in his SALN as of December 31, 2006 the following:[13]

Cash in Bank/Cash on Hand	Php29,170,970.30
Investments in Stocks (Paid-Up Capital)	25,880,433.66
Jewelry, Clothes and Other Personal Effects	9,500,000.00
House and Lot (Lubao, Pampanga acquired in 2004)	4,000,000.00
Improvement in La Vista Subd.	15,000,000.00
Residential House (La Vista Subd., QC acquired in 2004)	8,000,000.00
Residential House (US acquired in 2005 installment sale)	63,720,000.00

[11] PTO, CTA Crim. Case No. O-247 Docket, p. 755.
[12] PTO, CTA Crim. Case No. O-247 Docket, p. 756.
[13] PTO, CTA Crim. Case No. O-247 Docket, pp. 756-757.

Motor Vehicles	5,900,000.00
Household Furniture and Fixture	6,800,000.00
Total Assets	167,971,403.96
Personal Loan from Relatives	27,150,000.00
Installment Payable (from purchase of house)	51,216,000.00
Total Liabilities	78,366,000.00
Total Net Worth	89,605,403.96

Accused declared in his SALN as of December 31, 2006 that he has the following Business Interest and Other Financial Connections:[14]

Name of Firm/Company	Address	Nature of Business Interest/ Financial Connection	Date of Acquisition
Mikey's Horseman Bar and Grill, Inc.	Hobbies of Asia, Macapagal Ave., Pasay City	President	24 January 2006
Visualtoon Creations, Inc.	85-1 D. Tuazon St., Cubao, Quezon City	Shareholder	6 November 2006
LPG Auto Gas	379 Shaw Blvd., Brgy. Addition Hill, Mandaluyong City	Director	28 March 2007

Accused and his spouse declared in their Joint Annual ITR for taxable year 2006 as their taxable income the amount of Php1,738,500.00.[15]

Accused declared in his SALN as of December 31, 2007 the following:[16]

Cash in Bank and Cash on Hand	Php46,700,000.00
Stock Portfolio	44,332,409.95
Investments in various companies (Paid-Up Capital)	14,740,000.00

[14] PTO, CTA Crim. Case No. O-247 Docket, p. 757.
[15] PTO, CTA Crim. Case No. O-247 Docket, p. 757.
[16] PTO, CTA Crim. Case No. O-247 Docket, pp. 757-758.

Jewelries, Clothes and Other Personal Effects	9,500,000.00
Residential House and Lot (Lubao, Pampanga acquired in 2004)	4,000,000.00
Improvement in La Vista Subd.	15,000,000.00
Residential House (La Vista Subd., QC acquired in 2004)	8,000,000.00
Motor Vehicles	5,900,000.00
Household Furniture and Fixture	6,800,000.00
Total Assets	154,972,409.95
Accrued Expenses	1,532,500.00
Advances from Relatives	33,890,000.00
Stock-term Loans	14,350,000.00
Stocks Payable	8,451,976.29
Total Liabilities	58,224,476.29
Total Net Worth	96,747,933.66

Accused declared in his SALN as of December 31, 2007 that he has the following Business Interest and Other Financial Connections:[17]

Name of Firm/Company	Address	Nature of Business/ Financial Connection	Date of Acquisition
Los Manos Verdes Incorporated	2419 JIC Building, Syquia cor. Calderon St., Sta. Ana, Manila	Shareholder	24 September 2007
Mikey's Horseman Bar and Grill, Inc.	Hobbies of Asia, Macapagal Ave., Pasay City	President	24 January 2006
LPG Auto Gas	379 Shaw Blvd., Brgy. Addition Hill, Mandaluyong City	Director	28 March 2007
Beach Way Park	Beach Park Blvd., California	Shareholder	

Subsequently, a Complaint-Affidavit[18] jointly executed on 7th day of April 2011 by Aurora Flor, Maria Lourdes Sante, Virma Clemente Amelita Aquino, Ferdinand Malonzo, Leonesto Bernal and Sixto Dy, Jr., the duly designated revenue officers of the Bureau of Internal Revenue (BIR), who are assigned at the National Investigation Division

[17] PTO, CTA Crim. Case No. O-247 Docket, p. 758.
[18] Exhibit "B", CTA Crim. Case No. O-247 Docket, pp. 511-516.

(NID) to conduct a tax investigation on individuals and entities that may have committed violations of the provisions of the National Internal Revenue Code (NIRC) of 1997, recommending that a criminal action be taken and initiated against the spouses Juan Miguel M. Arroyo and Ma. Angela M. Arroyo for attempt to evade or defeat tax for taxable years 2004 to 2009 under Sections 51(A)(1)(a) and 74 in relation to Section 254 of the NIRC of 1997, and for failure to file return and pay tax for taxable years 2005, 2008 and 2009 under Section 255 of the NIRC.

Complainants aver that based on information and documents gathered during investigation, it was disclosed that Mr. & Mrs. Arroyo were able to acquire real, personal and other properties for the years 2004 to 2009, which are worth several millions; that among those properties are residential houses in Lubao, Pampanga & La Vista Subdivision in Quezon City, motor vehicles, shares of stock, jewelries, clothes and other personal effects as enumerated in the Statement of Assets, Liabilities & Net Worth (SALNs) of Mr. Arroyo as of December 31 of the years 2002 to 2009;[19] and that despite the receipt of substantial amounts of income as shown by their acquisition of numerous properties, Mr. and Mrs. Arroyo had repeatedly failed to file any Annual ITR and pay the corresponding taxes; and for the years that they filed their ITRs, they understated their income.[20]

Eventually, with the recommendation of the prosecution in a Resolution dated September 16, 2011 to indict accused in court,[21] the aforesaid three (3) separate Informations were filed on October 6, 2011, docketed as CTA Crim. Case Nos. O-247, O-248 and O-249.[22]

CTA Crim. Case No. O-247 was raffled to this Court, while CTA Crim. Case Nos. O-248 and O-249 were raffled to the Third and Second Divisions Court. This Court confirmed the consolidation of CTA Crim. Case Nos. O-248 and O-249, as granted by the CTA's Third and Second Divisions, with CTA Crim. Case No. O-247 in the Resolution dated October 28, 2011.[23]

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[19] Complaint-Affidavit; Exhibit "B", CTA Crim. Case No. O-247 Docket, p. 513.
[20] Complaint-Affidavit; Exhibit "B", CTA Crim. Case No. O-247 Docket, p. 514.
[21] CTA Crim. Case No. O-247 Docket, pp. 6-33; CTA Crim. Case No. O-248 Docket, pp. 6-33; CTA Crim. Case No. O-249 Docket, pp. 8-34.
[22] CTA Crim. Case No. O-247 Docket, pp. 4-5; CTA Crim. Case No. O-248 Docket, pp. 4-5; CTA Crim. Case No. O-249 Docket, pp. 6-7
[23] CTA Crim. Case No. O-247 Docket, pp. 268-270.

Meanwhile, before the consolidation of cases, this Court found probable cause for the issuance of a Warrant of Arrest against the accused in CTA Crim. Case No. O-247 in the Resolution dated October 21, 2011.[24] With respect to CTA Crim. Case Nos. O-248 and O-249, this Court found probable cause against accused in the Resolution dated January 5, 2012.[25]

As the accused already voluntarily submitted himself to the jurisdiction of the Court on October 14, 2011 and this Court accepted and approved his bail with respect to CTA Crim. Case No. O-247, and considering further that accused had posted the required cash bail in CTA Crim. Case Nos. O-248 and O-249, which were accepted and approved by the Third and Second Division Courts in their separate Resolutions dated October 14, 2011, this Court scheduled the arraignment of the accused for CTA Crim. Case Nos. O-248 and O-249 on January 11, 2012 together with CTA Crim. Case No. O-247.[26]

Accused filed his Motion to Suspend Proceedings on January 9, 2012, praying that his arraignment scheduled on January 11, 201[2] be cancelled and all proceedings be suspended *sine die* until after the Secretary of Justice resolves his appeal in NPS Docket No. XVI-INV-11D-00149 entitled "Bureau of Internal Revenue vs. Miguel M. Arroyo and Ma. Angela M. Arroyo".[27]

In a Resolution dated January 11, 2012, this Court granted accused's Motion to Suspend Proceedings pursuant to Sec. 11(c) of Rule 116 of the Revised Rules on Criminal Procedure. The arraignment scheduled on January 11, 2012 was reset to February 29, 2012.[28] The scheduled arraignment was further reset to April 18, 2012, upon agreement of the parties during the hearing held on February 29, 2012.[29]

During his arraignment on April 18, 2012, accused entered "NO PLEA" for the charged crime; thus, the Court entered a plea of "NOT GUILTY" for him in accordance with Section 1 (c), Rule 116 of the Rules of Court. The Court set the preliminary conference on May 16,

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[24] CTA Crim. Case No. O-247 Docket, pp. 239-243.
[25] CTA Crim. Case No. O-247 Docket, pp. 314-319.
[26] CTA Crim. Case No. O-247 Docket, pp. 235-236, and 319.
[27] CTA Crim. Case No. O-247 Docket, pp. 320-323.
[28] CTA Crim. Case No. O-247 Docket, pp. 357-358.
[29] February 29, 2012 Resolution, CTA Crim. Case No. O-247 Docket, pp. 362-364.

2012 and May 23, 2012, and the Pre-Trial Conference on June 6, 2012.[30]

Preliminary Conferences proceeded on May 16, 2012 and on May 23, 2012, where both parties presented their respective documents for marking, and specified the names of their respective witnesses to be presented.[31]

The prosecution filed its Pre-Trial Brief on June 14, 2012,[32] and accused filed his Pre-Trial Brief on June 25, 2012.[33]

After several resetting,[34] Pre-Trial Conference proceeded on September 12, 2012[35] and the same was continued on October 3, 2012.[36]

Trial ensued wherein the prosecution presented eleven (11) witnesses, namely: Atty. Aurora V. Flor, Ms. Victoria V. Santos, Ms. Lena A. Nuguid, Clavelina S. Nacar, Amador P. Ducut, Josephine S. Virtucio, Jasmin Y. Cruz, Ma. Gracia R. Bolutano, Arnel P. Larrobis, Luis A. Rivera, and Amelia P. Bondoc.[37]

Atty. Aurora V. Flor is the Assistant Chief of the National Investigation Division (NID) of the BIR. She testified that she was instructed through a memorandum by the Chief of the NID to form a team that will conduct an investigation against the accused and his spouse;[38] that she was one of the examiners tasked to conduct the

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[30] CTA Crim. Case No. O-247 Docket, p. 392-395.
[31] CTA Crim. Case No. O-247 Docket, pp. 491-501.
[32] CTA Crim. Case No. O-247 Docket, pp. 657-679.
[33] CTA Crim. Case No. O-247 Docket, pp. 695-710.
[34] Minutes of Preliminary Conference resetting the June 6, 2012 Pre-Trial Conference to June 20, 2012, CTA Crim. Case No. O-247 Docket, pp. 606-610; June 20, 2012 Pre-Trial Conference was reset to July 18, 2012 per Resolution issued on June 20, 2012, CTA Crim. Case No. O-247 Docket, pp. 686-687; July 11, 2012 Order resetting Pre-Trial Conference to August 15, 2012, CTA Crim. Case No. O-247 Docket, p. 711; August 10, 2012 Resolution granting accused's Motion to Reset filed on July 24, 2012 and resetting the Pre-Trial Conference to September 12, 2012, CTA Crim. Case No. O-247 Docket, pp. 723-724.
[35] CTA Crim. Case No. O-247 Docket, pp. 729-730.
[36] CTA Crim. Case No. O-247 Docket, p. 742.
[37] CTA Crim. Case No. O-247 Docket, pp. 780-781, 497-500, 581-585, 596-597, 610-611, 633-634, 649-650, 740-745; 756-759, 815-818, 826-834, 858-864, 895-900, 925-926, 943-944, 1022-1025.
[38] February 20, 2013 Transcript of Stenographic Notes (TSN), p. 14.

investigation pursuant to a Memorandum dated January 14 and another Memorandum of Assignment dated January 17, 2011;[39] in relation to their investigation, they requested for a copy of the Statement of Assets Liabilities and Networth (SALN) of the accused for taxable years 2001 to 2010 but the Ombudsman furnished them only with a copy of the 2002 SALN, while the House of Representatives furnished them with the SALN for 2004 to 2010;[40] in relation to those documents gathered, they prepared the computation of the unreported taxable income based on the Net Worth [method];[41] that after having prepared the computation, they served the Letter of Authority (LOA) signed by the Commissioner of Internal Revenue and addressed to the accused authorizing the Revenue Officers to conduct an investigation of tax liabilities of the accused;[42] and after service of LOA, they filed a complaint before the Department of Justice against the accused,[43] the filing of which was authorized by the CIR by way of a referral letter to the DOJ Secretary.[44]

With respect to their computation, Atty. Flor testified that the increase in net worth was compared to the reported taxable income and the resulting discrepancies were considered as unreported income of the accused for 2004 to 2009 and, thereafter, computed the tax liability of the accused using the graduated tax table under Section 24 of the Tax Code.[45] She said, however, that a different formula was used for the year 2003 as they were not able to get a copy of the 2003 SALN of the accused.[46] She then opted to use the ending net worth of 2002 as the beginning net worth for 2003 and added the 2003 compensation income per ITR filed by the accused to arrive at the ending net worth of 2003. [47] The increase in net worth[48] purportedly represented the unreported income.

For 2006, Atty. Flor said that the increase in net worth is arrived at after comparing the ending net worth of accused for 2006 and the ending net worth for 2005, and the increase in net worth was compared with the taxable income per accused's ITR for 2006 and the difference is the unreported income.[49] She said that she used the same

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[39] February 20, 2013 TSN, p. 15.
[40] June 19, 2013 TSN, pp. 4-5, 16.
[41] June 19, 2013 TSN, pp. 19-20, October 2, 2013 TSN, p. 26.
[42] June 19, 2013 TSN, pp. 21-22.
[43] June 19, 2013 TSN, p. 27.
[44] July 17, 2013 TSN, p. 5.
[45] June 19, 2013 TSN, pp. 47, 49, 50.
[46] June 19, 2013 TSN, p. 42.
[47] July 17, 2013 TSN, p. 26.
[48] June 19, 2013 TSN, p. 80.
[49] July 17, 2013 TSN, pp. 44-46.

procedure for 2007, but since she has not seen the ITR of the accused for said year and she just relied on the certification from BIR RDO 39 that accused did not file his ITR for 2007, the amount was taken from the Annual Information Return on Income Tax Withheld on Compensation filed by the House of Representatives before BIR RDO 39.[50]

She further testified that they issued a Preliminary Assessment Notice (PAN) and a Formal Letter of Demand (FLD) with details of discrepancies after accused's lawyer filed a response to the PAN. She said that accused's lawyer sent a reply to the FLD questioning the basis of the assessment [with a statement] that there is still a pending case before the CTA and the bureau should defer the investigation as to the civil aspect of the case.[51]

She confirmed that every increase in net worth is attributed to unreported income,[52] but agreed that it is possible that certain items, like jewelry and watches were gifted to accused, in which case it is the donor who would have been liable for donor's tax.[53] She testified that she could not identify/specify the particular item of gross income not reflected in the ITR, but stated that an income is the source of fund used to acquire the assets, and that any in-flow or increase in wealth is considered an income of the accused.[54] She affirmed that the probable source of income was the fact that accused and his wife are officers, directors and stockholders of various corporations,[55] but any monetary benefit in the form of dividends to them as directors and stockholders is not a taxable income.[56] She said that there is no indication that there was a donation when they compared the reported taxable income and the increase in net worth, and they concluded that it is an unreported income.[57] They reached such a conclusion because they have a Certification from the BIR that the closest relatives of the spouses [referring to accused and his wife] did not file a Donor's Tax Return or Estate Tax Return.[58] She affirmed that based on the SALN, there is an indication that accused might have borrowed the money,[59] and it is also possible that there was an exchange of values, that is, he could have sold something and converted it to cash, but she still sticks

[50] July 17, 2013 TSN, p. 48-50, 56-57.
[51] July 17, 2013 TSN, pp. 56-60, 64, 75, 76.
[52] July 17, 2013 TSN, p. 77-78.
[53] July 17, 2013 TSN, p. 79-80.
[54] July 17, 2013 TSN, pp. 82, 84, 85, 89.
[55] July 17, 2013 TSN, p. 86.
[56] July 17, 2013 TSN, pp. 86-87.
[57] October 2, 2013 TSN, p. 16
[58] October 2, 2013 TSN, p. 16-17.
[59] October 2, 2013 TSN, p. 15.

to her assumption that it was earned.[60] She affirmed that accused hid his income in his ITR but disclosed the same in his SALN.[61] When asked about what was not reflected as correct and accurate information, she said that it may be the deductions as the taxpayer may have over-claimed it by more than 25% of the actual deduction, and confirmed that the failure to state correct and accurate information has something to do with the taxable income.[62]

With respect to the filing of their criminal complaint before accused was able to produce the requested documents, she said that based on the results of their preliminary investigation, they concluded that they were ready to file the complaint and their records were already complete before filing the case.[63] The documents they asked is with respect to the civil aspect of the case, as they still require the taxpayer to produce the books of accounts.[64] She confirmed that the LOA was issued on April 4, 2001 and stated the purpose of an LOA issuance, which is to preclude amendment of returns. She said that even if there is no LOA, the BIR can still file a criminal case.[65]

She confirmed that the law requires that the sources of income that were unreported be identified.[66] While she confirmed that accused and his wife have business interests in several corporations indicating that they received other income which they did not declare,[67] she assumed that accused and his wife earned income from corporations to which they were listed as directors, but she never spoke with any of these corporations.[68] She confirmed that she assumed that extra income was earned because accused's ITRs did not match his SALNs.[69]

She confirmed that the formula for computing the net income subject to tax using the net worth method under RMO 15-95 is not a simple method of comparing an increase in net worth and declared income, as increase in net worth will be added to the non-deductible item less non-taxable income which is subjected to final tax or transfer tax.[70] She said that there is a possibility that accused received wedding

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[60] October 2, 2013 TSN, p. 15.
[61] October 2, 2013 TSN, p. 27-28.
[62] October 2, 2013 TSN, p. 62, 64.
[63] October 2, 2013 TSN, p. 33.
[64] October 2, 2013 TSN, p. 35, 62.
[65] October 2, 2013 TSN, p. 59, 61
[66] December 4, 2013 TSN, p. 30.
[67] December 4, 2013 TSN, p. 30.
[68] December 4, 2013 TSN, p. 33-37.
[69] December 4, 2013 TSN, p. 45.
[70] December 4, 2013 TSN, pp. 44-46

gifts but she did not make such allowance pertaining thereto since there was no lead as to the donors.[71] She confirmed that she did not make allowances for gifts up to one hundred thousand pesos, which she said to be tax exempt, and that she did not deduct personal and additional exemption.[72]

She read one of the conditions for the application of net worth method stated under RMO 43-74, which is – that the taxpayer's books do not clearly reflect his income. She agreed that the law refers to ledger, journals and accounting books, but in this case, she only examined the ITR and SALN. She confirmed that she neither tried to get a copy of the books nor to look at his books because accused's ITR cannot justify the increase in his net worth; hence, she said, there was no need for them to check the records.[73]

She confirmed that RMO 43-74 (net worth method) requires evidence of possible sources of income as listed in RMO 15-95.[74] She said that proof of a likely source of income may be shown by any of the following:

(i) demonstrating that there were specific omissions of income items by the taxpayer in his ITR;

(ii) showing that the nature of the taxpayer's business is such that it has the capacity of generating a substantial income;

(iii) proof of under-declaration of income by the existence of unregistered sales invoices which were not recorded in the books;

(iv) findings of unrecorded purchases;

(v) existence of business permits, license from government agencies as to the type of businesses the taxpayer is engaged;

(vi) keeping separate sets of books, one registered and the other reflecting the correct transactions of a business;

(vii) use of false invoices or documents; and

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[71] December 4, 2013 TSN, p. 52-53.
[72] December 4, 2013 TSN, p. 54-55.
[73] December 4, 2013 TSN, pp. 57-61.
[74] December 4, 2013 TSN, p. 61, 67.

(viii) willful destruction of accounting records.[75]

She eventually belabored to address the requirements of RMO 43-74.

First, about the specific omission of income, she said that it is the "discrepancy, the unreported income," which she assumed from the increase in net worth.[76]

Second, she revealed that she did not investigate any businesses of the accused that could have generated the income.[77]

Third, she did not find proof of undeclared income to verify the existence of unregistered invoices.[78]

Fourth, she did not find evidence of unrecorded purchases.[79]

Fifth, she did not find any business permits showing that accused had other businesses, and as to the license of the corporation in which accused invested or served as a director or president, they were able to get one, but said that she did not actually have to see the license of the said corporation because accused declared his investments therein in the SALN.[80] She confirmed, however, that the mere fact that the SALN indicated their [accused and his wife] corporate directorships convinced her that they earned additional income.[81]

Sixth, she did not find evidence of double bookings.[82]

Seventh, she did not see any false invoices or documents.[83]

Eighth, she did not see any evidence of destruction of accounting records.[84]

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[75] December 4, 2013 TSN, p. 68-73.
[76] December 4, 2013 TSN, p. 68-69.
[77] December 4, 2013 TSN, p. 69.
[78] December 4, 2013 TSN, p. 70.
[79] December 4, 2013 TSN, p. 70.
[80] December 4, 2013 TSN, p. 71.
[81] December 4, 2013 TSN, p. 72.
[82] December 4, 2013 TSN, p. 72.
[83] December 4, 2013 TSN, p. 72.
[84] December 4, 2013 TSN, p. 73

When pressed about the proof of likely source of income as she did not find any of the eight indicators, she said that the ITR which served as the summary of income and expense of accused should at least justify the increase in net worth of the accused.[85] She even emphasized that they secured the Monthly Remittance Return filed by the corporation in which they [accused and his wife] invested or served as director, but based on the reply of the District, the companies did not file a Monthly Remittance Return or the Annual Information Return showing that they withheld the final tax on dividends or the expanded withholding tax on per dimes paid to director.[86]

As to the second element under RMO 15-95, particularly the existence of competent evidence showing fraud, which is - the accompanying state of mind variously described as being evil and bad faith, deliberate and not accidental or willful,[87] when asked as to where the evil lies since the information used by them came from the SALN and ITR of the accused, she said that it is in the reporting of income in the ITR,[88] in view of the fact that the ITR did not justify the increase in net worth.[89]

During her re-direct examination, she testified that they used the 2002 SALN secured from the Office of Ombudsman as a baseline in computing the tax liabilities of the accused;[90] that she had not find any other source of income of accused other than those appearing in the SALN;[91] and that she referred that case to the DOJ before the expiration of the 10-day period given to accused to present certain documents because during the preliminary investigation before the issuance of the LOA, they concluded that the documents are complete for filing of criminal case before the DOJ.[92]

On re-cross examination, she agreed that government dignitaries would have attended the wedding of accused, but she did not investigate whether the Speaker of the House, any senator and the cousins gifted accused and his wife. They proceeded with the computation since based on the reply of one of the service of the Bureau, the relatives enumerated in the access letter did not give

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[85] December 4, 2013 TSN, p. 73.
[86] December 4, 2013 TSN, p. 74.
[87] December 4, 2013 TSN, p. 75-76.
[88] December 4, 2013 TSN, p. 77.
[89] December 4, 2013 TSN, p. 78.
[90] January 15, 2014 TSN, p. 13.
[91] January 15, 2014 TSN, pp. 24-26.
[92] January 15, 2014 TSN, p. 27.

donation to the accused.[93] She confirmed that she assumed that any increase in net worth arose from an undeclared income.[94]

She clarified that she actually compared the original SALN for 2002 as against the Supplemental SALN as presented to her by the defense, and after comparison, she disregarded the Supplemental SALN and stuck to the original SALN obtained from the Office of the Ombudsman.[95] She confirmed that she did not give it full faith and credit because to her, it does not exist legally as she could not get a copy.[96]

Ms. Victoria V. Santos is an Assistant Commissioner of the BIR. In relation to her function as Assistant Commissioner of Information Systems Operations Service, she recalled having issued a Certification pertaining to the tax compliance of the accused for 2002 to 2009 based on the request of Deputy Commissioner Estela V. Sales of the Legal and Inspection Group. She also recalled having issued a Certification bearing tax compliance of some of the relatives of the accused based on the request of Deputy Commissioner for Legal and Inspection Group.[97]

On cross-examination, she confirmed her certification that accused filed a return for 2004, but she does not know whether an income tax return contains false or incomplete information.[98] She also confirmed that accused filed a return for 2006 but she does not know whether the income tax return is incomplete or contains false information.[99] She agreed that there is no indication in the certification that an income tax return was filed for 2007. When asked if she is certain that an ITR was not filed, she said that they did not find any record, and that there is no ITR as far as the database is concerned. She stated that she certified as to the contents of their database.[100] She was of the belief that there are cases of loss of income tax returns in BIR's possession.[101] She confirmed that accused was included in the alpha list of employees of the House of Representative, and pointed out its significance that it is considered as his income tax return

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[93] January 15, 2014 TSN, p. 32-35.
[94] January 15, 2014 TSN, p. 35-36.
[95] January 15, 2014 TSN, p. 44-45.
[96] January 15, 2014 TSN, p. 45.
[97] February 26, 2014 TSN, p. 4, 6, 13.
[98] May 7, 2014 TSN, p. 5-6.
[99] May 7, 2014 TSN, p. 6-8.
[100] May 7, 2014 TSN, p. 9-10.
[101] May 7, 2014 TSN, p. 11.

if he does not have any other income.[102] She is not aware, however, of any other source of income of accused and she confirmed that she never investigated such matter as her participation in this case was only to check the database.[103]

Regarding the Certification she issued with respect to the tax compliance of certain individuals who were linked to accused, she confirmed that nothing was filed based on their database.[104] She does not know when capital gains taxes, donor's taxes, and documentary stamp taxes were due from these individuals.[105]

Ms. Lena A. Nuguid is the Chief of Taxpayer's Service Section, BIR RDO 21B, San Fernando, Pampanga. In relation to the performance of her official function, she remembers having issued a Certification as to the registration status of accused, which she identified in Court.[106]

On cross-examination, she said that she has no personal knowledge of how much income, wages or other remuneration accused received, and of any source of income of accused.[107] She clarified that the TIN was not cancelled but just ceased. She pointed out that when the TIN "ceased", it means that it is dissolved because the taxpayer has still a liability with the BIR while the TIN is "cancelled" when the taxpayer has no more tax liabilities.[108] She confirmed that accused has tax liabilities, but she does not know what those tax liabilities are since they are not allowed to look at that.[109]

On re-direct examination, she testified that TIN 210-543-613-000 ceased, not cancelled, on July 29, 2009. She confirmed that the Certification was issued on April 5, 2011.[110]

Clavelina S. Nacar is the OIC-Assistant Regional Director of Revenue Region No. 9, San Pablo City Laguna. Prior to that post, she was assigned at Revenue District Office No. 39, South Quezon City as Revenue District Officer. She testified about having issued a

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102 May 7, 2014 TSN, p. 11.
103 May 7, 2014 TSN, p. 12-13.
104 May 7, 2014 TSN, p. 14, 26.
105 May 7, 2014 TSN, p. 27-28.
106 April 30, 2014 TSN, p. 9, 12, 13.
107 April 30, 2014 TSN, p. 15-16.
108 April 30, 2014 TSN, p. 16.
109 April 30, 2014 TSN, p. 17.
110 April 30, 2014 TSN, p. 23-24.

Certification sometime in April 2011 pertaining to the Annual Income Tax Return filed by accused. She issued the certification as she received a communication from Deputy Commissioner Estela Sales. She recalled that after receiving the request, she instructed the Chief of the Document Processing Division to look into the records of accused to verify if accused filed those returns, and to verify if there are available records on file; and that the Chief of the Document Processing Division informed her of the result of verification, that is - - that no ITR was filed for taxable year 2001, but ITRs were filed for 2002, 2003 and 2004.[111]

On cross-examination, she said that an "ITS" is an Integrated Tax System of the BIR within which records of the taxpayers are being stored; that she does not have access on the 1604 OCF being filed by the employers; that not all of the records can be seen because their access is limited; and that while their access extends to the taxpayer's payments and compliance as far as filing of returns are concerned,[112] she nonetheless is not certain if there was no income tax payment for 2007.[113] She confirmed that taxes are withheld at source, and that accused's employer for 2007 was the House of Representatives.[114] She was not sure if accused's employer withheld the taxes due on accused's income since while it is the duty of the employer to withhold and remit the withholding taxes, the details as to who the employees and from whom the taxes are withheld can only be seen upon submission by Congress of the 1604CF. She reiterated that she does not have access to see the details of the 1604CF as her access is limited.[115] She said that it is Congress which becomes liable if it failed to withhold and remit the taxes withheld.[116]

She also confirmed, upon clarificatory question, that her Certification is based only on the filing or non-filing of Income Tax Returns but not with respect to whether or not there has been payment of taxes for the taxable year.[117]

Amador P. Ducut is a retired employee of the BIR and formerly the OIC, Revenue District Officer of San Fernando, La union. His testimony was offered for the following purposes: to identify the Request of Deputy Commissioner Estela Sales and to identify the

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[111] May 7, 2014 TSN, p. 30, 39, 40, 41, 43, 44.
[112] May 7, 2014 TSN, p. 47, 50.
[113] May 7, 2014 TSN, p. 52.
[114] May 7, 2014 TSN, p. 52.
[115] May 7, 2014 TSN, p. 52-53.
[116] May 7, 2014 TSN, p. 54.
[117] May 7, 2014 TSN, p. 56.

Certification dated April 6, 2011 pertaining to the ITRs filed by the accused.[118] After the defense stipulated on the existence of those documents, he was subjected to cross-examination.[119] He confirmed his Certification that no ITR was filed for taxable year 2006 as far as his district is concerned, but he said that it is possible that an ITR was filed in 2006 but not with his office.[120]

Josephine Sulla Virtucio is the Revenue District Officer of RDO 43A, East Pasig under Revenue Region No. 7, Quezon City. Prior to her new assignment, she was the Revenue District Officer of RDO 33, Intramuros Manila.[121] She remembered having issued a Certification in compliance with the Letter-Access to record issued by the BIR National Office. She identified the document which she signed on May 23, 2012, and the print-outs coming from the Integrated Tax System.[122]

On cross-examination, she said that with respect to the original ITR which was filed in April 2007, accused is registered with RDO 39 but he paid in a bank within the jurisdiction of RDO 33; that it was transmitted to RDO 39; that there is an office policy for transmittal of Income Tax Returns received by a district to the district office where the taxpayer is registered, and she assumed that the policy was followed;[123] that the 2006 ITR was filed with the Metrobank Branch under RDO 33 and his RDO Code is RDO 39.[124] She confirmed that the data in their ITS was lifted from the ITR that was filed, but they do not know the whereabouts of the original ITR; and she cannot produce the 2006 ITR.[125] With respect to the encoding of data from the ITR to the Integrated Tax System, she confirmed that it is possible for BIR employee to commit human error, but she said that the Revenue Data Center double checks whether error was made.[126] She does not know whether or not accused's ITR for 2006 failed to supply correct and accurate information of his income. She confirmed that she does not know whether or not accused committed a crime when he filed his ITR for 2006, and she does not know anything about this case except that she culled up information from the ITS.[127]

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118 May 7, 2014 TSN, p. 64.
119 May 7, 2014 TSN, p. 65, 67.
120 May 7, 2014 TSN, p. 68-69.
121 May 7, 2014 TSN, p. 73-75.
122 May 7, 2014 TSN, p. 76, 77, 80.
123 May 7, 2014 TSN, p. 86-87.
124 May 7, 2014 TSN, p. 91-92.
125 May 7, 2014 TSN, p. 88-89.
126 May 7, 2014 TSN, p. 102-103.
127 May 7, 2014 TSN, p. 117-118.

Jasmin Y. Cruz is the Assistant Provincial Human Resource Management Officer (HRMO) of the Province of Pampanga. Prior to her present assignment, she was an Administrative Officer V and in relation to the performance of her duties, she remembered having issued a certified photocopy of a letter signed by Luis Rivera dated March 29, 2011 and its attachments, which she identified. She also identified the following documents: a letter to the Office of the Ombudsman dated April 19, 2002 (certified photocopy on file); a Certification signed by Jesusa Goseco with the certification by Jasmin Cruz; and a letter to the Office of the Ombudsman dated June 30, 2003 (certified photocopy on file).[128] She said that she issued the certified photocopies based on office file issued by her previous supervisors.[129] She said that their office did not receive a copy of accused's amended Supplemental SALN but they only have a cover letter.[130]

Ma. Gracia R. Bolutano is the OIC-Administrative Section Chief of the Document Processing Division, Revenue Region 6, Manila. She remembered having extracted/downloaded a copy of the ITR of accused for taxable year 2006, and she made a print-out, which she identified. She said that she extracted a copy as she received instructions from her superior, Revenue District Officer Josephine S. Virtucio of RDO 33, that there was an Access to Record letter coming from the BIR National Office.[131]

On cross-examination, she said that their RPS encoder is the one who entered the data into the BIR database, but she confirmed that there can be human error in the encoding of data.[132] She said that the status of the returns she printed out is "suspended" because the ITR was filed at RDO 33 but accused is registered at RDO 39; and that the cause of suspension is that it did not match with the registration database of RDO 33.[133] She confirmed that tax payments was made by accused amounting to P447,000.00; that the encoder got the data from the Income Tax Return.[134] When asked about the whereabouts of the 2006 ITR, she said that it should be at the Administrative Division of the Region, but she cannot find it there anymore, or maybe, it was transferred to the Malabon storage area of the region but she did not ask about it.[135] When shown with a photocopy of Certificate of Compensation Payment Tax Withheld for taxable year 2006 of the

[128] June 25, 2014 TSN, p. 5, 10, 12-15.
[129] June 25, 2014 TSN, p. 15.
[130] June 25, 2014 TSN, p. 29.
[131] June 25, 2014 TSN, p. 34, 37, 41-42.
[132] June 25, 2014 TSN, p. 43-44.
[133] June 25, 2014 TSN, p. 44.
[134] June 25, 2014 TSN, p. 44-45.
[135] June 25, 2014 TSN, p. 46-48.

accused, she said she has not seen it before, but it does not look irregular.[136] She confirmed that accused earned extra income other than compensation income for 2006 but he paid taxes on it. She answered in the negative when she was asked if accused misdeclared anything in the ITR, underdeclared or underpaid anything, or committed any crime.[137]

During her re-direct examination, she said that she does not have the capacity [to say] whether the taxpayer misdeclared or filed the correct tax return; and she has no idea whether the taxpayer filed the correct gross sales or income earned unless there was an investigation. She clarified that she does not have the capacity to say whether accused misdeclared, but based on the document, she maintained her answer that there was no misdeclaration.[138] She further stated that her office has no authority to say that on the face of the documents received or extracted, a violation of the Tax Code has been committed as they referred it to the Assessment Section.[139]

Arnel P. Larrobis is designated as Administrative Assistant II, SALN in-charge at the Office of the Deputy Ombudsman for Luzon.[140] He remembered having received a request letter from the BIR requesting for the SALN of the accused for the years 2001 to 2003, which he identified.[141] After receiving the request letter, he gave a reply-letter to Atty. Sixto C. Dy, Jr., Division Chief, National Investigation Division, BIR National Office, Quezon City. He identified the reply-letter and the certified photocopies of accused's SALN as of December 31, 2002.[142] He affirmed his Certification that they do not have on file accused's SALN for 2003. He said that the Office of the Provincial Governor submitted a transmittal to their office on May 20, 2004 and the name of the accused is not in the list of the transmittal.[143]

On cross-examination, he testified as to the manner by which SALNs are stored in their office files. He stored them and put them into folders and the data filer box.[144] He also revealed that he did not witness the movement of documents from Manila to Quezon City office, and that he did not conduct a document inventory when they

[136] June 25, 2014 TSN, p. 49.
[137] June 24, 2014 TSN, p. 52-53.
[138] June 24, 2014 TSN, p. 57.
[139] June 24, 2014 TSN, p. 59.
[140] July 2, 2014 TSN, p. 6.
[141] July 2, 2014 TSN, p. 7.
[142] July 2, 2014 TSN, p. 8.
[143] July 2, 2014 TSN, p. 17.
[144] July 2, 2014 TSN, p. 41-42.

moved.[145] He has no idea regarding the number of documents left in his office in 2002 when he left Manila as well as the number of documents seen in Quezon City when he moved nor whether he lost any document/s.[146] He confirmed that the Supplemental SALN of accused for 2002 was transmitted to the Office of the Ombudsman and opined that the document looks original, although he has not seen the document before. He does not know whether the Office of the Ombudsman lost it.[147] He confirmed that he just relied on the claim of the provincial government that no SALN was submitted to them.[148]

In his re-direct examination, he was asked about the reason for their failure to provide the BIR with accused's SALN for 2003 and, in reply, he said that they do not have it on file, which means that accused did not submit his SALN to the Office of the Deputy Ombudsman for Luzon.[149]

On re-cross examination, he said that it is not possible that accused's papers might exist in his office that is not in the three bunches.[150]

On clarificatory questions, he confirmed that when the document is not existing at the time he issued the Certification, that document may not be existing at all;[151] that there is no system that would actually control what document is being pulled out when it is being done by any staff; and that the staff can pull out other documents without him knowing it.[152]

In line with the directive for the witness to bring the logbook that would show that the SALNs of the accused for 2001 to 2003 has actually entered or not entered in his office,[153] as well as the September 22, 2003 letter of the Provincial Administrator to the Ombudsman,[154] Mr. Larrobis appeared during the September 10, 2014 hearing. During the hearing, parties' counsels stipulated that the Supplemental SALN for 2002 is with the Office of the Ombudsman.[155]

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[145] July 2, 2014 TSN, p. 47, 48, 50.
[146] July 2, 2014 TSN, p. 51-52.
[147] July 2, 2014 TSN, p. 54-55.
[148] July 2, 2014 TSN, p. 57-58.
[149] July 2, 2014 TSN, p. 59.
[150] July 2, 2014 TSN, p. 68-69.
[151] July 2, 2014 TSN, p. 61.
[152] July 2, 2014 TSN, p. 77-78.
[153] July 2, 2014 TSN, p. 78.
[154] July 2, 2014 TSN, p. 85-86.
[155] September 10, 2014 TSN, p. 4, 10.

He confirmed that he has a record of the Supplemental SALN of the accused for 2002.[156]

Mr. Luis Rivera is the Secretary of the Sangguniang Panlalawigan of Pampanga.[157] He identified the letter he issued to the Chief of National Investigation Division of the BIR dated May 14, 2012 relative to the existence or non-existence of the SALN of accused. He testified that the basis of his statement in the letter that *"no available records on file as regards the SALN of accused for 2002 and 2003"* is the certification issued by the previous HRMO.[158]

On cross-examination, he said that the stamp at the upper right hand corner of the [photocopy of SALN of accused for 2003] looks like the stamp of the HRMO, but he would not know if the stamp is still the stamp of the HRMO.[159]

On clarificatory question, he confirmed that he made his own validation of the certification made by his predecessor in office as to whether accused's SALN was on file with his office;[160] that there is actually no document which constitutes the SALN of the accused in his office;[161] and that the SALNs are kept by the HRMO, and once submitted to the HR, they are eventually submitted to the Office of the Ombudsman.[162]

Ms. Amelia P. Bondoc is the Provincial Human Resource Management Officer of the Provincial Government of Pampanga.[163] She attested that the document [certification from the Provincial HRM] exists in the records of the Provincial HRMO, but she cannot testify on its contents.[164] When asked about the logbook of her office pertaining to the SALNs of the accused, she said that they do not have available logbook because [when] they transmit the SALNs to the Office of the Ombudsman, they just get the receiving copy of the transmittal and they do not bring along the logbook.[165]

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[156] September 10, 2014 TSN, p. 7.
[157] September 10, 2014 TSN, p. 15.
[158] September 10, 2014 TSN, p. 21-22.
[159] September 10, 2014 TSN, p. 28-29.
[160] September 10, 2014 TSN, p. 24.
[161] September 10, 2014 TSN, p. 26-27.
[162] September 10, 2014 TSN, p. 30.
[163] March 18, 2015 TSN, p. 6.
[164] March 18, 2015 TSN, p. 13, 16.
[165] March 18, 2015 TSN, p. 16-17.

On cross-examination, she confirmed that she is the actual custodian of the folders. She cannot answer the question whether it is possible that there are other documents floating around somewhere that belongs to the files of the accused because the documents shown to her are the only available files when she assumed her duties at the Provincial Government.[166] She agreed that when the Office of the Ombudsman says that it has a copy of the SALNs, [their office] must have transmitted it.[167] She likewise agreed that the transmittal letter to the Ombudsman does not mention whose SALNs were transmitted.[168]

With respect to its documentary evidence, the prosecution filed its Formal Offer of Evidence[169] consisting of the following exhibits:

Exhibit	**Description**
"A" to "A-3"	Original of Letter Referral dated April 6, 2011 issued by Kim S. Jacinto-Henares, Commissioner of Internal Revenue (CIR) addressed to Hon. Leila M. De Lima, Secretary of Justice, Department of Justice (DOJ)
"B" to "B-5"	Original of Joint Complaint-Affidavit dated April 7, 2011 consisting of six (6) pages executed by Ma. Lourdes Sante, Amelita Aquino, Ferdinand Malonzo, Leonesto Bernal, Virma C. Clemente, Aurora V. Flor and Sixto C. Dy, Jr.
"C" to "C-2"	Original of Access Letter dated March 21, 2011 issued by Estela V. Sales, Deputy Commissioner, Legal Group to ACIR Victoria V. Santos, Information Systems Operation Service
"D"	Original of Access Letter dated March 31, 2011 issued by James H. Roldan, Assistant Commissioner, Enforcement and Advocacy Service to Hon. Ma. Merceditas Navarro-Gutierrez, Office of the Ombudsman
"E" to "EE-1"	Original of Access Letter dated March 31, 2011 issued by James H. Roldan, Assistant Commissioner, Enforcement and Advocacy Service to Atty. Marilyn B. Yap, Secretary General, House of Representatives
"F" to "FF-1"	Original of Access Letter dated March 31, 2011 issued by Estela V. Sales, Deputy Commissioner, Legal Group to RDO Ricardo B. Espiritu, Revenue District Office No. 50, South Makati
"G" to "G-1"	Original of Access Letter dated March 31, 2011 issued by Estela V. Sales, Deputy Commissioner, Legal Group to RDO

[166] March 18, 2015 TSN, p. 18-21.
[167] March 22, 2015 TSN, p. 22.
[168] March 22, 2015 TSN, p. 23-24.
[169] CTA Crim. Case No. O-247 Docket, pp. 1056-1076.

	Clavelina M. Nacar, Revenue District Office No. 39, South Quezon City
"H"	Original of Access Letter dated April 4, 2011 issued by Estela V. Sales, Deputy Commissioner, Legal Group to Atty. Romulo L. Aguila, Jr., Regional Director, Revenue Region No. 4, San Fernando, Pampanga
"I" to "I-4"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2002 of Juan Miguel M. Arroyo
"J" to "J-2"	Certified true copy of Annual Income Tax Return (BIR Form 1701) of Arroyo, Juan Miguel Macapagal for the year 2003
"J-3" to "J-4"	Certified true copy of Certificate of Creditable Tax withheld at Source (BIR Form 2307) of Arroyo, Juan Miguel Macapagal for the period January 1, 2003 to December 31, 2003
"K" to "K-4"	Certified true copy of Annual Income Tax Return (BIR Form 1701) of Arroyo, Juan Miguel M. and Ma. Angela M. Arroyo for the year 2004
"L" to "L-7"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2004 of Juan Miguel M. Arroyo
"M" to "M-9"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2005 of Juan Miguel M. Arroyo
"N" to "N-9"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2006 of Juan Miguel M. Arroyo
"O" to "O-9"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2007 of Juan Miguel M. Arroyo
"P" to "P-9"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2008 of Juan Miguel M. Arroyo

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"Q" to "Q-9"	Certified true copy of Sworn Statements of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections, and Identification of Relatives in the Government Service as of December 31, 2009 of Juan Miguel M. Arroyo
"R" to "R-1"	Original of Certification dated April 5, 2011 issued by Maria Lena A. Nuguid, Chief, Taxpayers Service Section, Revenue District Office No. 21B, South Pampanga
"S"	Original Print-Out from BIR Integrated Tax System (ITS) as to the registration details of Arroyo, Ma. Angela Montenegro with TIN 185-405-985-000
"T"	Original of Certification dated April 6, 2011 issued by Ricardo B. Espiritu, Revenue District Officer, Revenue District Office No. 50, South Makati
"U"	Original of Certification dated April 6, 2011 issued by Clavelina S. Nacar, Revenue District Officer, Revenue District Office No. 39, South Quezon City
"V"	Original Copy of Certification dated April 6, 2011 issued by Amador P. Ducut, OIC-Revenue District Officer, Revenue District Office No. 21B, South Pampanga
"W" to "W-4"	Original of Certification dated March 22, 2011 issued by Victoria V. Santos, Assistant Commissioner, Information Systems Operations Service
"X"	Certified true copy of Breakdown of the Increase in Networth from 2004 to 2009 of Juan Miguel M. Arroyo and Ma. Angela M. Arroyo
"Y"	Certified true copy of Computation of Unreported Taxable Income based on Networth from 2004 to 2009 of Juan Miguel M. Arroyo and Ma. Angela M. Arroyo
"Z"	Memorandum dated July 15, 2011, consisting of thirty-eight (38) pages executed by Ma. Lourdes Sante, Amelita Aquino, Ferdinand Malonzo, Leonesto Bernal, Virma C. Clemente, Aurora V. Flor and Sixto C. Dy, Jr.
"AA"	Original of Access Letter dated May 11, 2012 issued by Sixto C. Dy, Jr., Chief, National Investigation Division, to Arnel P. Larrobis, Admin. Assistant II/SALN-In-Charge, Office of the Deputy Ombudsman for Luzon
"BB" to "BB-9"	Original of Letter dated May 15, 2012, issued by Arnel P. Larrobis, Admin. Assistant II/SALN-In-Charge, Office of the Deputy Ombudsman for Luzon, to Atty. Sixto C. Dy, Jr., Chief, National Investigation Division and its attached SALN for years 2001 and 2002 of Accused.

"CC"	Original of Access Letter dated May 11, 2012, issued by Sixto C. Dy, Jr., Chief, National Investigation Division, to Luis A. Rivera, OIC-HRMO, Provincial Human Resource Management Office, Provincial Capitol, City of San Fernando, Pampanga
"DD" to "DD-8"	Original of Letter dated May 14, 2012, issued by Luis A. Rivera, OIC-HRMO, Provincial Human Resource Management Office, Provincial Capitol, City of San Fernando, Pampanga, to Atty. Sixto C. Dy, Jr., Chief, National Investigation Division
"EE" to "EE-9"	Certified ITS Print out of Annual Income Tax Return (BIR Form 1701) of Arroyo, Juan Miguel Macapagal, for the year 2005
"FF" to "FF-3"	Preliminary Assessment Notice dated September 20, 2011 with Details of Discrepancy signed by James H. Roldan, Assistant Commissioner for Enforcement Service
"GG" to "GG-3"	Formal Letter of Demand dated January 10, 2012 with Details of Discrepancy signed by James H. Roldan, Assistant Commissioner for Enforcement Service
"GG-4"	LBC Express Official Receipt
"II" to "II-3"	Letter of Authority No. 211-2011-00000083 dated April 4, 2011 signed by Kim S. Jacinto-Henares, Commissioner of Internal Revenue and the attached checklist of requirements
"JJ" to "JJ-3"	Letter of Authority No. 211-2011-00000084 dated April 4, 2011 signed by Kim S. Jacinto-Henares, Commissioner of Internal Revenue and the attached checklist of requirements
"KK" to "KK-12"	Certification dated March 30, 2011 issued by Victoria V. Santos, Assistant Commissioner for Information systems Operations Service (ISOS)
"LL to LL-1"	Original of Access Letter dated March 28, 2012, issued by Estela V. Sales, Deputy Commissioner for Legal and Inspection Group, to Victoria Santos, Assistant Commissioner for ISOS for CGT, DST, and DT Returns of relatives of Accused
"MM to MM-18"	Certified true copy of letter dated April 1, 2004 signed by Benalfre Galang, Provincial Administrator of Pampanga, submitting to the Office of the Ombudsman the SALN of official and employees of the Provincial government of Pampanga

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In a Resolution[170] dated August 11, 2015, the Court admitted all exhibits in evidence, except Exhibits "II" to "II-3" and "JJ" to JJ-3" for not being found in the case records. Exhibit "II" was later admitted in the Court's Resolution dated January 7, 2016.[171]

On August 18, 2015, accused filed his Motion for Leave to File Demurrer to Evidence.[172] The prosecution filed its Opposition/Comment (To Accused's Motion for Leave to File Demurrer to Evidence) on September 7, 2015.[173] In a Resolution issued on January 7, 2016, the Court granted accused's Motion for Leave to File Demurrer to Evidence.[174]

Accused filed his Demurrer to Evidence on January 22, 2016,[175] with the prosecution's Opposition (To Accused's Demurrer to Evidence)[176] filed on February 1, 2016, and the same was submitted for resolution on February 10, 2016.[177] Eventually, accused's Demurrer to Evidence was denied in a Resolution dated on April 26, 2016.[178]

Thereafter, accused presented testimonial and documentary evidence. He presented the following witnesses, namely: (i) Mr. Junjun C. Molina, who testified during the hearing held on December 7, 2016;[179] (ii) Mr. Ignacio Xavier G. Barranco, who testified during the hearing held on January 18, 2017 and March 8, 2017;[180] and Atty. Aurora V. Flor, who testified during the hearing held on April 26, 2017.[181]

Mr. Junjun C. Molina used to work with accused as his Executive Assistant (EA) from 2004 to 2008 and as accused's Chief of Staff (COS) in Congress from 2008-2010. His duties and responsibilities as Executive Assistant (which included coordinating accused's meetings) were the same as when he was COS.[182] When asked if accused prepared and filed the SALN, he said that he

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[170] CTA Crim. Case No. O-247 Docket, pp. 1133 to 1134.
[171] CTA Crim. Case No. O-247 Docket, pp. 1219-1226.
[172] CTA Crim. Case No. O-247 Docket, pp. 1141-1145.
[173] CTA Crim. Case No. O-247 Docket, pp. 1159-1161.
[174] CTA Crim. Case No. O-247 Docket, pp. 1211-1218.
[175] CTA Crim. Case No. O-247 Docket, pp. 1230-1291.
[176] CTA Crim. Case No. O-247 Docket, pp. 1298-1310.
[177] February 10, 2016 Resolution, CTA Crim. Case No. O-247 Docket, p. 1316.
[178] CTA Crim. Case No. O-247 Docket, pp. 1353-1364.
[179] CTA Crim. Case No. O-247 Docket, pp. 1503-1509.
[180] CTA Crim. Case No. O-247 Docket, pp. 1560-1566, and 1600-1608.
[181] CTA Crim. Case No. O-247 Docket, pp. 1624-1632.
[182] December 7, 2016 TSN, p. 18-19

coordinated the preparation of SALNs during his entire employment with the accused. He elaborated the term coordinated to mean that he was the one who talked to accused, who in turn gave the details; thereafter, he transmitted the same to their secretary[183] who put the entries in the SALN.[184] He testified that he saw the SALNs after they were filled-up by the secretary; that he was the one who made accused sign; and that accused signed his SALN.[185] He recognized accused's SALNs for 2004, 2005, 2006, 2007, 2008, 2009,[186] and confirmed that all of these SALNs indicate that either accused or his wife owns shares of stocks in various corporations.[187] He revealed that he was personally involved in the two companies [indicated in the SALNs], namely: (i) Los Manos Gardos, Inc. – engaged in agricultural land; and, (ii) U18 Property, Inc. – a property holdings; that he and accused lose money from both companies, and he knows this because he was the treasurer of both companies.[188] When asked about "Mikey's Horseman Bar and Grill", he is not sure if the same made money, but he said that it was sold in 2011 as it was actually losing money by then.[189]

On cross-examination, he disclosed that he was like a trusted aide of the accused, and he knows basically all accused's deeds. He confirmed that he is aware of the SALNs but not with respect to the accused's ITRs. He confirmed that for 2004-2010 SALNs, he just relied on the details provided by accused and he has no personal knowledge as to their correctness. He said that he is not aware of any other financial dealings of accused aside from Los Manos Gardos, Inc., U18 Property, Inc., and Horseman, and he confirmed that he has no other idea or personal knowledge as to the other financial capacity of the accused.[190]

Mr. Ignacio Xavier G. Barranco is a Certified Public Accountant. He was presented as an expert witness.[191] He testified that he knows the accused as he is the son of former President Gloria Macapagal Arroyo; that he had been asked to testify as an expert witness on this matter; that he looked at the SALNs and ITRs of accused and his wife from 2002 to 2007 and the computation made by the BIR of the undeclared income using the net worth method; that he

[183] December 7, 2016 TSN, p. 20
[184] December 7, 2016 TSN, p. 25.
[185] December 7, 2016 TSN, p. 21.
[186] December 7, 2016 TSN, p. 21, 23, 25, 27-29.
[187] December 7, 2016 TSN, p. 29.
[188] December 7, 2016 TSN, p. 29-31.
[189] December 7, 2016 TSN, p. 32.
[190] December 7, 2016 TSN, p. 34-37, 39.
[191] January 18, 2017 TSN, p. 3-5.

is familiar with the net worth method as it is an audit tool;[192] that the BIR determined the net worth increase and deducted the taxable income from the ITR, and attributed the difference as unrecorded or undeclared income;[193] that the increase in net worth for 2004 was treated entirely as taxable;[194] that it is not sound to immediately conclude that the difference between the two net worths and the income subjected to tax in the ITR is an undeclared income subject to tax; that there are pre-requisites before the net worth method is applied, which he further explained;[195] and that the BIR should have at least determined if there are some non-deductible items and non-taxable revenue items.[196]

He pointed out through visual illustration that if accused received donations or got an inheritance during the year, the same is not subject to the regular income tax imposed on individuals as it is already subjected to estate tax and donor's tax;[197] that for non-taxable capital gains, if there was appreciation of assets such as land, the same should not be considered as income;[198] that there is no income for [stocks] dividend until it is sold,[199] hence, stock dividends are non-taxable;[200] that interest income from a bank account is subject to final withholding tax;[201] and that cash dividend is not an item subject of regular income tax imposed on individuals as it is already subject to final tax.[202] He further said that the BIR did not go through the correct process and procedure prescribed under RMC No. 43-74, and as a result thereof, the error in the computation for 2004 affects the computation for the subsequent year, explaining that the ending balance in a year will become the beginning balance of the succeeding year; and that the BIR's computation is inaccurate.[203]

Atty. Aurora V. Flor confirmed that the Supplemental SALN for 2002 was found out. She recalled that on the basis of such document, she was asked to re-compute the supposed deficiency taxes of accused and his wife.[204] She confirmed that she made a re-

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[192] January 18, 2017 TSN, p. 30, 31.
[193] January 18, 2017 TSN, p. 42.
[194] January 18, 2017 TSN, p. 42.
[195] January 18, 2017 TSN, p. 35
[196] January 18, 2017 TSN, p. 44-45.
[197] January 18, 2017 TSN, p. 51.
[198] January 18, 2017 TSN, p. 52.
[199] January 18, 2017 TSN, p. 52-53.
[200] March 8, 2017 TSN, p. 19.
[201] January 18, 2017 TSN, p. 54.
[202] January 18, 2017 TSN, p. 54.
[203] March 18, 2017 TSN, p. 24-26.
[204] April 26, 2017 TSN, p. 7.

computation in writing, which was marked as Exhibit 60 at the RTC; that since the missing SALN was eventually discovered, she based the new computation on the declared net worth in that SALN.[205] She said that the fraud lies on the increase in net worth which was not supported by the ITRs filed by the accused, even if she was not able to point out the possible source of income, since there were business interests based on accused's SALN.[206] She confirmed that despite her failure to find any possible source of income, she assumed that there was fraud, there was criminal intent, and that she has to say that there is fraud as a government employee.[207]

With respect to documentary evidence, accused filed his Formal Offer of Evidence[208] on July 5, 2017, which is within the extended period,[209] offering the following exhibits:

Exhibit	Description
1	Letter referral dated 6 April 2011, from Bureau of Internal Revenue ["BIR"] Commissioner Henares to Secretary of Justice De Lima
2	Letter dated 21 March 2011, from Deputy Commissioner Estela Sales to Victoria V. Santos
3	Letter dated 31 March 2011, from Asst. Commissioner James Roldan to Omb. Merceditas Navarro-Gutierrez
4	Letter dated 31 March 2011, from Asst. Commissioner James Roldan to House of Reps. Sec. Gen. Marilyn Yap
5	Letter dated 31 March 2011, from Dep. Commissioner Estela Sales to RDO Ricardo Espiritu
6	Letter dated 31 March 2011, from Dep. Commissioner Estela Sales to RDO Clavelina Nacar
7	Letter dated 4 April 2011, from Dep. Commissioner Estela Sales to Romulo Aguila, Jr., RDO Reg. 4, Pampanga
8	Juan Miguel's Sworn Statements of Assets, Liabilities and Networth ["SALN"] as of 31 December 2002

[205] April 26, 2017 TSN, p. 9-10.
[206] April 26, 2017 TSN, p. 15.
[207] April 26, 2017 TSN, p. 15.
[208] O-247 Docket, pp. 1667-1679.
[209] Order issued on July 4, 2017 granting accused until July 5, 2017 to file Formal Offer of Evidence; CTA Crim. Case No. O-247 Docket, p. 1665.

9	Juan Miguel's Annual Income Tax Return ["ITR"] for tax year 2003
10	Juan Miguel's and Angela's ITR for tax year 2004
11	Juan Miguel's SALN as of 31 December 2004
12	Juan Miguel's SALN as of 31 December 2005
13	Juan Miguel's SALN as of 31 December 2006
14	Juan Miguel's SALN as of 31 December 2007
15	Juan Miguel's SALN as of 31 December 2008
16	Juan Miguel's SALN as of 31 December 2009
17	Certification dated 5 April 2011, issued by Maria Lena A. Nuguid of RDO So. Pampanga
18	Print-out from BIR Integrated Tax System as to the Registration details of Ma. Angela M. Arroyo with TIN 185-405-985-000
19	Certification dated 6 April 2011, issued by Ricardo Espiritu, RDO So. Makati
20	Certification dated 6 April 2011, issued by Clavelina M. Nacar, RDO So. QC
21	Certification dated 6 April 2011, issued by Amado P. Ducut, RDO SO. Pampanga
22	Certification dated 22 March 2011, issued by Asst. Comm'r Victoria Santos
23	Letter dated 11 May 2012, from BIR Division Chief Sixto Dy Jr. to Arnel P. Larrobis
24	Larrobis' reply to BIR Div. Chief Sixto Dy dated 15 May 2012
25	Letter dated 11 May 2012, from BIR Division Chief Sixto Dy to HRM Pampanga Luis A. Rivera
26	Luis Rivera's reply to Atty. Sixto Dy, dated 14 May 2012
27	Counter-Affidavit of Juan Miguel M. Arroyo and Ma. Angela M. Arroyo dated 27 June 2011
28	Certificate of Compensation Payment/Tax Withheld for taxable year 2005

29	Juan Miguel M. Arroyo's Annual Income Tax Return for the year 2005
30	Certificate of Compensation Payment/Tax Withheld for taxable year 2008
31	Certificate of Compensation Payment/Tax Withheld for taxable year 2009
32	Juan Miguel's SALN as of 31 December 2003
34	Juan Miguel's SALN as of 31 December 2006
35	Juan Miguel's Reply Memorandum dated 29 July 2011
36	Juan Miguel's Motion for Reconsideration dated 14 October 2011
37	BIR Preliminary Assessment Notice dated 20 September 2011
39	Juan Miguel's and Angela's Petition for Review dated 14 December 2011
40	Juan Miguel's Motion for Reconsideration dated 4 April 2012
41	Juan Miguel's SALN as of 14 May 2001
42	Juan Miguel's ITR for tax year 2001
43	Juan Miguel's Supplemental SALN as of 31 December 2002
44	Juan Miguel's ITR for tax year 2002
45	Office of Vice-Governor's letter to the Pampanga Provincial Legal Officer dated 27 August 2003
45-a	Letter to the Provincial Human Resources Management Office dated 19 September 2003
45-b	Letter to the Office of the Ombudsman dated 22 September 2005
46	Juan Miguel's SALN as of 31 December 2003
47	Juan Miguel's SALN as of 31 July 2004
48	Juan Miguel's ITR for tax year 2005
49	Certificate of Compensation Payment/Tax Withheld for tax year 2006

50	Juan Miguel's SALN as of 31 July 2007
51	Certificate of Compensation Payment/Tax Withheld for taxable year 2007
52	Certificate of Compensation Payment/Tax Withheld for taxable year 2008
53	Certificate of Compensation Payment/Tax Withheld for taxable year 2009
54	Juan Miguel's SALN as of 31 June 2010
55	Certificate of Compensation Payment/Tax Withheld for tax year 2010
56	LOA to House of Representatives dated 4 April 2011
57	Formal Letter of Demand dated 10 January 2012
58	Access Letter to Victoria Santos re: Donor's Tax Return and Capital Gains Tax Return
59	Computer Extract of MMA 2006 ITR
60	Recomputation after Considering the 2002 Supplemental SALN
61	Breakdown of Increase in Net Worth for Taxable Years 2004 to 2009 after considering Juan Miguel's Supplemental SALN
62	Breakdown of Increase in Net Worth for Taxable Years 2004 to 2009 without Juan Miguel's Supplemental SALN
63	Computation of Taxable Income without Juan Miguel's Supplemental SALN
A-63	Illustrative Computation of Mr. Ignacio Xavier Barranco

Plaintiff filed its Comment (to the Accused' Formal Offer of Evidence) on August 4, 2017,[210] and accused's Formal Offer of Evidence was submitted for resolution on August 14, 2017.

In a Resolution issued on October 3, 2017, the Court admitted accused's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37,

[210] CTA Crim. Case No. O-247 Docket, pp. 1686-1700.

39, 40, 41, 42, 43, 44, 45, 45-a, 45-b, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 60, 61, 62, and 63. Exhibits 36, 56, 57, 58, and 59 were denied for failure to submit the duly marked exhibits, while Exhibit A-63 was likewise denied, for not being found in the records of the case.

Plaintiff filed its Memorandum on November 7, 2017, while accused filed his Memorandum on December 6, 2017. The case was submitted for decision on December 20, 2017.

PARTIES' ARGUMENTS

Plaintiff's arguments

Plaintiff, in its Memorandum, argues that accused, being a resident citizen of the Philippines earning income, is mandated by law to declare his income for each taxable year and file the required tax returns and pay the corresponding taxes due thereon as required by Sections 24(A)(1)(a), 51(A)(1)(a) and 74(A) of the NIRC of 1997, and that as an elected public official from 2001 to 2010, he is mandated under RA No. 6713 to accomplish and annually submit declarations under oath of his Statement of Assets, Liabilities and Net Worth (SALN), including that of his spouse and children under 18 years of age who are living in their household.

It asserts that based on the SALNs filed for 2004, 2006 and 2007, accused was able to acquire real and personal properties for the years 2004, 2006 and 2007 worth several millions, among which are residential houses in Lubao, Pampanga and La Vista Subdivision in Quezon City, motor vehicles, shares of stock, jewelries, clothes and other personal effects as enumerated in his SALNs as of December 31 of the years 2004, 2006 and 2007; and that despite the receipt of substantial amounts of income for 2004, 2006 and 2007, as shown by his acquisitions of numerous properties, he failed to file his Annual ITR for 2007, and for the years that he filed his ITRs, he understated his income by not supplying the correct and accurate information as to his income in his ITRs for 2004 and 2006, thereby paying lesser amounts of income tax.

It explains that through the use of the Net Worth Method of tax investigation, accused had substantially underdeclared his income for taxable years 2004 and 2006, and did not file his ITR for 2007; and that using that Net Worth Method, his unreported income was established by a comparison between the increase in net worth and the reported taxable income. It adds that the Net Worth Method of proof is a long-established indirect method of proof regularly used in establishing taxable income in criminal tax cases, and this method of proof is useful in reconstructing taxable income when the government is unable to establish income through direct evidence. It traces the first use of the Net Worth Method in the United States of America in the case of *Capone v. United States*, while in the Philippines, it was accordingly sanctioned by the Supreme Court in the cases of *Eugenio Perez vs. CTA & CIR*,[211] *Jose Avelino vs. CIR*,[212] *CIR vs. William Li Yao*,[213] and *Maria B. Castro vs. CIR*.[214]

It further points out that the method is a re-statement of a basic accounting principle which states that assets minus liabilities equals networth. Thus, under this method, taxpayer's net worth is determined both at the beginning and at the end of the same taxable year. The increase or decrease in net worth is adjusted by adding all non-deductible items and subtracting therefrom non-taxable receipts. The resultant figure is the taxable net income before statutory personal and additional exemptions. The general theory underlying this method is that the taxpayer's money and other assets in excess of liabilities, after accurate and proper adjustment of non-deductible and non-taxable items not accounted for in his tax return, is deemed to be unreported income. Otherwise stated, the theory is that the unexplained increase in networth of a taxpayer is presumed to be derived from taxable income.

It contends that the difference between the declared income of accused per his ITRs for taxable years 2004 and 2006 and the total amount of unreported/undeclared income for 2007 showed a substantial underdeclaration of more than thirty (30%) percent, which constituted a *prima facie* evidence of a fraudulent return under Sec. 248(B) of the NIRC of 1997. The act of accused of not filing his ITR for taxable year 2007 is evident of his fraudulent scheme to defeat payment of taxes. According to plaintiff, such continuous and deliberate failure of accused to supply/declare true, correct and accurate information as to his income in his ITRs for 2004 and 2006 and his failure to file his ITR for 2007 demonstrated his propensity and willful intent to evade the payment of correct taxes due the government.[215]

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[211] G.R. No. L-10507, May 30, 1958.
[212] G.R. No. L-14847, September 19, 1961, and G.R. No. L-17715, July 31, 1963.
[213] G.R. No. L-11875, December 28, 1963.
[214] G.R. No. L-12174, April 20, 1962.
[215] Plaintiff's Memorandum filed on November 7, 2017, CTA Crim. Case No. O-247 Docket, unpaginated.

Accused's counter-arguments

Accused prays for a judgment of acquittal. He argues that for six (6) long years of litigation, the BIR has failed to prove its case, much less his guilt beyond reasonable doubt; that during trial, not a single prosecution witness testified that he acquired other taxable income that he did not declare.

He stresses that Net Worth Method is not a simple arithmetic computation as it is governed by the BIR's own Revenue Memorandum Circular (RMC) No. 43-74. He claims that none of the conditions as provided under Section 3 of RMC No. 43-74 are present in this case to warrant the use of the Net Worth Method. Relatedly, accused asserts the following:

(1) despite issuance of a Letter of Authority, the BIR did not conduct an actual examination of accused's records to ascertain if there was any undeclared income, thereby failing to establish: (a) that accused's books of accounts do not truly reflect his income; (b) that accused does not maintain any books of accounts; or (c) that accused refused to produce his books of accounts;

(2) the BIR did not attempt to investigate the likely source of unreported income as the BIR never spoke with anyone in the corporations in which accused and his wife hold stock;

(3) Sec. 3(c) of RMC No. 43-74 stresses the importance of a correct opening of net worth, but the BIR simply made unauthorized assumptions on what accused's starting net worth should be;

(4) Sec. 3(d) of RMC No. 43-74 requires proper adjustment in order that the Net Worth Method conforms with the income tax laws, but no adjustment was made to exclude items which are non-taxable as the BIR computed the undeclared taxable income by merely comparing the increase in net worth during the year and the reported taxable income per ITR, and considered the entire difference derived as undeclared taxable income; and,

(5) even if the Net Worth Method could be legally applied, the BIR deliberately ignored the formula that Revenue Memorandum Order (RMO) No. 15-95 prescribed for computing the net taxable income. Accused states that had the BIR only followed the rules governing the use of the net worth method, they would have come up

with a dramatically different result, and this case would not have been filed.

Accused further stresses that even if the prosecution had been able to prove that he owed some tax, he would still be entitled to an acquittal as a matter of law. The crux of the indictment is fraudulent intent and willfulness, whether in accused's alleged failure to file a return or in the alleged omission to declare true facts, albeit nothing in the evidence indicates the fraud that he allegedly employed.

ISSUES

1. Whether or not accused willfully, unlawfully and substantially failed to supply correct and accurate information with respect to his true and correct income for taxable years 2004 [CTA Crim. Case No. O-247] and 2006 [CTA Crim. Case No. O-248];

2. Whether or not accused is required by law, rules and regulations to file his Annual Income Tax Return for income earned for taxable year 2007 [CTA Crim. Case No. O-249];

3. Whether or not accused willfully, unlawfully and feloniously failed to make and refused to file his Annual Income Tax Return for taxable year 2007 [CTA Crim. Case No. O-249;

4. Whether or not a prior assessment of the tax liability of accused is required prior to the criminal prosecution for tax evasion;

5. Whether or not the use by the BIR of the "Net Worth Method" in computing the alleged deficiency taxes of accused is appropriate;

6. Whether or not the BIR is barred from assessing deficiency taxes for the taxable years 2004 to 2007 on the ground of prescription;

7. Whether or not accused and his wife Ma. Angela Montenegro-Arroyo earned income in addition to his compensation income as Vice-Governor and Member of the House of Representatives;

a) In the affirmative, whether or not there was a duty to declare that additional income and to pay income tax thereon;

b) In the affirmative, whether or not there was criminal intent to declare and evade taxes; and

c) Whether or not accused is liable to pay the alleged deficiency taxes.[216]

THE COURT'S RULING

The three (3) Informations allege that accused violated Section 255 of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 24 and 51(A)(1)(a) of the NIRC of 1997, as amended, by:

a) Failing to supply correct and accurate information in his income tax returns for the years 2004 and 2006 (CTA Crim. Case No. O-247 and CTA Crim. Case No. O-248); and,

b) Failing to file his income tax return for the year 2007 (CTA Crim. Case No. O-249).

Section 255 of the NIRC of 1997, as amended, 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</u> promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not

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[216] PTO, CTA Crim. Case No. O-247 Docket, pp. 752-779, 760-761.

less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." *(Boldfacing & underscoring supplied)*

Parenthetically, to sustain a conviction for the offenses, as charged under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution beyond reasonable doubt:

1. Accused **is required** under the NIRC or its rules and regulations to pay any tax or make a return, or to supply correct and accurate information in the return;

2. Accused **failed to pay** the required tax, or **make** a return, or **supply** correct and accurate information at the time required by law or rules and regulations; and

3. Accused's failure to pay the required tax or to make a return, or to supply correct and accurate information at the time required by law or rules and regulations is **willful**.

To begin with, the second and third elements under Section 255 of the NIRC of 1997, as amended, are dependent on the first element, that is - - the taxpayer is required to pay tax and/or to file a return, or to supply correct and accurate information in the return as required by the NIRC. In other words, there can be no willful failure to pay a tax and/or to file a return, or to supply correct and accurate information, if there is in fact no requirement to do so.

To prove the first element of the offense under Section 255 of the NIRC of 1997, as amended, the prosecution is burdened to establish two (2) essential components, namely: (1) that accused is a resident of the Philippines as alleged in the Informations; and (2) the source of income of the accused in taxable years 2004, 2006 and 2007 including the taxable income derived therefrom, which income was not declared in the corresponding Income Tax Returns (ITRs). These elements are indispensable to establish that there was failure to supply correct and accurate information for years 2004 and 2006, or that accused did not file an ITR for 2007.

The NIRC of 1997, as amended, requires a Filipino citizen residing in the Philippines to file an Income Tax Return and to pay income tax on income from within and without the Philippines. This requirement is evident from the provisions of Sections 23, 24 and 51 of the NIRC of 1997, as amended, *viz.*:

> "SEC. 23. *General Principles of Income Taxation in the Philippines*- Except when otherwise provided in this Code: (A) **A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;** (B) A nonresident citizen is taxable only on income derived from sources within the Philippines; (C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income derived from sources within the Philippines: *Provided,* That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker; (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;(E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; and (F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."
>
> xxx xxx xxx
>
> **"SEC. 24. *Income Tax Rates*** -
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.*
>
> (1) **An income tax is hereby imposed**: (a) **On the taxable income** defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year **from all sources within and without the Philippines by every individual citizen of the Philippines residing therein**; (b) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection(C) of Section 23 hereof; and (c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (b), (C) and (D) of this Section, derived for each taxable year from all

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sources within the Philippines by an individual alien who is a resident of the Philippines."

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"**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 Philippine 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. xxx." *(Boldfacing & underscoring supplied)*

The aforequoted provisions also require a non-resident citizen of the Philippines to file an ITR and pay income tax on taxable income derived only from within the Philippines. Thus, a resident citizen and a non-resident citizen are required to file ITR and pay income tax, albeit the taxable base is different, that is, on income from all sources (within and without the Philippines) for resident citizen and on income derived from within the Philippines for non-resident citizen.

Accused was a resident Filipino citizen in 2004, 2006 & 2007

In these consolidated cases, the Informations allege that accused is a resident of the Philippines for 2004, 2006 and 2007.

The parties admitted during the Pre-Trial Conference that accused is a Filipino citizen with residence at No. 15 Badjao Street, La Vista Subdivision, Katipunan Avenue, Quezon City; and, that he was the Vice-Governor of Pampanga for 2001 to 2004 and elected as Congressman for the 2nd District of Pampanga from 2004 to 2010.[217]

The parties' judicial admission in the course of the proceedings are conclusive and the facts subject thereof do not require evidence.[218] Accused, an elected public official who filed the requisite SALNs[219] during the concerned period, was a resident citizen of the Philippines required to pay tax or make a return, or to supply correct and accurate information in the return.

Failure to Supply Correct and Accurate Information

There is no dispute that accused filed his ITRs for 2004 and 2006. The prosecution, however, claims that accused failed to supply correct and accurate information therein.

The prosecution argues that the declarations in accused's SALNs for 2004, 2006 and 2007 prove the following:

> i) Accused was able to acquire real and personal properties for the concerned years worth several millions, which include residential houses in Lubao, Pampanga & La Vista Subdivision in Quezon City, motor vehicles, shares of stock, jewelries, clothes and other personal effects as enumerated in his SALNs for the years 2004, 2006 and 2007;

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[217] PTO, CTA Crim. Case No. O-247 Docket, pp. 753-754.
[218] Philippine Long Distance Telephone Company (PLDT) vs. Pingol, G.R. No. 182622, September 8, 2010
[219] Exhibits "L", "N", "O", "11", "13", "14"; CTA Crim. Case No. O-247 Docket, pp. 532-533, 536-537, 538-539.

ii) Despite the receipt of substantial amounts of income in 2004, 2006 and 2007, as shown by his acquisitions of numerous properties, he failed to file his Annual ITR for 2007, while in the ITRs he filed for 2004 and 2006, accused understated his income by not supplying correct and accurate information; and,

iii) Accused has unreported income, consisting of the difference between the increase in his net worth and his reported taxable income.

In determining the alleged unreported income of the accused, the prosecution utilized the net worth method which the CIR is allowed to employ in computing the income of a taxpayer pursuant to Section 43 of the NIRC of 1997, as amended.[220]

In criminal cases, as in the cases at bar, the prosecution is burdened to identify the likely source of the unreported or undeclared income of the accused in order to sustain a conviction. On this point, the teachings in ***Bureau of Internal Revenue vs. Court of Appeals***[221] are instructive:

> "In Ungab v. Judge Cusi, Jr., we 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. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. **However, in Commissioner of Internal Revenue v. Court of Appeals, we 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.**
>
> In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of

[220] SEC. 43. *General Rule.* - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.
[221] G.R. No. 197590, November 24, 2014.

reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.

In the case at bar, petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds.

xxx xxx xxx

And since the underdeclaration is more than 30%of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as prima facie evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. **It agreed with Acting Justice Secretary Devanadera that petitioner failed to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and "to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties adverted to x x x." We find otherwise**.

The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit. The computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the under declaration exceeded 30% of the reported or declared income.

The revenue officers also <u>identified the likely source of the unreported or undeclared income</u> in their Reply-Affidavit. The pertinent portion reads:

'7. x x x x

[Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/ rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and

> came up with the **findings that indeed the unexplained funds sought to have been used in acquiring the valuable property in Tagaytay x x x <u>came from the underdeclaration of rental income</u>.'**
>
> **Apparently, the revenue officers considered respondent <u>Antonio's rental business to be the likely source of their unreported or undeclared income</u> due to his unjustified refusal to allow the revenue officers to inspect the building."** *(Boldfacing and underscoring supplied)*

Aside from the likely source of income, jurisprudence also requires evidence showing, **with reasonable certainty**, an opening net worth to serve as a starting point, from which to calculate future increases in the taxpayer's assets; and that the net worth increases are attributable to taxable income.[222]

The requisites for the use of the net worth method are stated in Revenue Memorandum Circular (RMC) No. 43-74, pertinent part of which provides:

> (1) That the taxpayer's books do not clearly reflect his income or the taxpayer has no books, or if he has books, he refuses to produce them;
>
> (2) That there is evidence of a possible source or sources of income to account for the increases in net worth or the expenditures;
>
> (3) That there is a fixed starting point or opening net worth, i.e., a date beginning with a taxable year or prior to it, at which time the taxpayer's financial condition can be affirmatively established with some definiteness; <u>and</u>
>
> (4) That the circumstances are such that the method does reflect the taxpayer's income with reasonable accuracy and certainty, and proper and just additions of personal expenses and other non-deductible expenditures were made, and correct, fair and equitable credit adjustments were given by way of eliminating non-taxable items.

The conjunctive word *"and"* is used in the above-quoted RMC. Such conjunctive word is not without legal significance. It means "in addition to". The word *"and"*, whether used to connect words, phrases

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[222] Perez vs. Court of Tax Appeals, G.R. No. L-10507, May 30, 1958.

or full sentences, must be accepted as "binding together" and as "relating to one another". In statutory construction, the word *"and"* implies conjunction or union.[223] The import of the use of the term *"and"* means that **all of the elements mentioned above must concur[224] in order to justify the use of the net worth method in determining the correct income of a taxpayer.**

As to the **first condition under RMC 43-74**, the evidence presented by the prosecution failed to establish that accused's books do not clearly reflect his income, or that accused has no books at all, or accused refuses to produce his books. These books may reasonably pertain to a journal, ledger and subsidiary books referred to in the NIRC.[225]

Records disclose that the LOA, dated April 4, 2011, was **served on April 5, 2011**,[226] and that the joint Complaint-Affidavit[227] dated April 7, 2011 was **referred to the then Secretary of Justice by the Commissioner of Internal Revenue (CIR) in a letter dated April 6, 2011** and **received by the Prosecution Staff Docket Section on April 7, 2011**.[228] The proximity of the dates from the issuance of the LOA up to the filing of the joint Complaint-Affidavit before the DOJ shows that **the BIR failed to consider the books of the accused, which is a vital pre-requisite for the use of the net worth method**. Such utter disregard of the mandatory requirement has been highlighted during trial when Atty. Flor testified that after service of LOA, they filed a complaint before the DOJ against the accused as authorized by the CIR, even before the expiration of the 10-day period given to accused to present certain documents, because during the BIR's preliminary investigation, they already concluded that the

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[223] Commissioner of Internal Revenue vs. Ariete, G.R. No. 164152, January 21, 2010.
[224] Compania General De Tabacos De Filipinas and La Flor De La Isabela, Inc. vs. Sevandal, G.R. No. 161051, July 23, 2009.
[225] SEC. 232. *Keeping of Books of Accounts.* - (A) *Corporations, Companies, Partnerships or Persons Required to Keep Books of Accounts.* - All corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep a journal and a ledger or their equivalents: xxx
SEC. 233. *Subsidiary Books.* - All corporations, companies, partnerships or persons keeping the books of accounts mentioned in the preceding Section may, at their option, keep subsidiary books as the needs of their business may require: *Provided,* That were such subsidiaries are kept, they shall form part of the accounting system of the taxpayer and shall be subject to the same rules and regulations as to their keeping, translation, production and inspection as are applicable to the journal and the ledger.
[226] Exhibit "P-II", CTA Crim. Case No. O-247 Docket, p. 1153.
[227] Exhibit "P-II", CTA Crim. Case No. O-247 Docket, pp. 511-516.
[228] Exhibit "A" to "A-3", CTA Crim. Case No. O-247 Docket, pp. 508-510.

documents are complete for purposes of filing a criminal case before the DOJ. Pertinent portions of Atty. Flor's testimony states:

> "JUSTICE DEL ROSARIO:
>
> Do you still understand the question? Despite the fact that you did not find any other source of income of the accused, you still proceeded to make a computation of supposed discrepancy in the income. That is the question. So, why did you still proceed despite the fact that you do not have evidence or any information with respect to any possible other source of income?
>
> ATTY. FLOR (Witness for the prosecution):
>
> A. Based on the certification of the Asst. Commissioner Victoria V. Santos that there are no donations coming from the closed relatives of the accused, and the ITR of the accused which is the Summary of Financial Transaction of the accused, there is no indication there that interest income which should be the reconciling item, the ITR, we proceeded with the computation of the liabilities of the accused based on the increase in Net Worth.
>
> ATTY. PADILLA
>
> Q. Last time, you were testifying when there was a lengthy question pertaining to why you referred the case to the Department of Justice through this issuance of the Letter of Authority or before the expiration of the ten-day period you've given the accused to present documents. Why is that so, ma'am?
>
> ATTY. FLOR (Witness for the prosecution):
>
> A. **Because during the Preliminary Investigation conducted before the issuance of the Letter of Authority, we concluded that the documents are complete for filing of criminal case before the DOJ**."[229] (Boldfacing supplied)

Further scrutiny of the joint Complaint-Affidavit[230] discloses that such important condition of the RMC was not taken into account by the complainants. The joint Complaint-Affidavit shows that complainants based their conclusion of unreported taxable income on **very limited information and documents gathered during their preliminary investigation, *i.e.*, the SALNs and ITRs of the accused and the certifications from the BIR Offices.** There is nothing in the joint Complaint-Affidavit which states that the BIR requested the accused to produce his books, and that despite such request, accused failed to produce his books, or that accused has no books at all, or that the books produced by the accused do not clearly reflect his income. Atty.

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[229] January 15, 2014 TSN, pp. 26-28.
[230] Exhibit "B", CTA Crim. Case No. O-247 Docket, p. 511.

Flor even revealed that they only examined the ITR and SALN of the accused, and they did not try to get a copy of the books and did not bother to look at accused's books since according to her, accused's ITR cannot justify the increase in his net worth. Atty. Flor's testimony on this matter reads:

"ATTY. RONDAIN:

Q. Now, for the application of the networth method, it requires, and this is paragraph 3 [of RMO 43-74], appearing on page 3. Could you read these conditions for application, please?

MS. FLOR:

A. The conditions for use of the method. The condition for the proper use of such method as found in the law itself and the case developed on the matter are.

ATTY. RONDAIN:

Q. Could you read A, please?

MS. FLOR:

A. **Letter A, that the taxpayer's books do not clearly reflect his income**.

XXX XXX XXX

ATTY. RONDAIN:

Q. **What books did you examine, Ms. Flor?**

MS. FLOR:

A. **The ITR of the accused and the SALN.**

ATTY. RONDAIN:

Q. I would interpret that to mean that the law refers to ledgers, journals, accounting books?

MS. FLOR:

A. Yes, Sir.

ATTY. RONDAIN:

Q. Did you examine any accounting books/accounting records?

MS. FLOR:

A. That's the reason why we resorted to the networth method since there is no direct evidence wherein we can audit, we resorted to, (paused).

ATTY. RONDAIN:

Q. No direct evidence?

MS. FLOR:

A. Yes, Sir.

ATTY. RONDAIN:

Q. Did you try to get evidence? Did you try to get their books?

MS. FLOR:

A. From the time we file the Complaint, we believe that the documents we have gathered during preliminary investigations already complete.

ATTY. RONDAIN:

All right.

Q. **So did you try to get copy of their books? Did you try to look at their books?**

MS. FLOR:

A. **No, Sir, no.**

xxx xxx xxx

A. The fact that the ITR of the accused cannot justify the increase in networth of the accused, there is no need for us to check the records. We believe that it does not clearly reflect the income of the accused considering that he's a compensation income earner and as a compensation income earner, the record that the accused to be submitted to us is 2316 Form and the ITR.

ATTY. RONDAIN:

Q. So you didn't care to look at his books?

MS. FLOR:

A. As I've said earlier, I believe that the record of the accused is incomplete. Since he is a compensation income earner. I think, he will submit the 2316 and the Alphalist of the House of Representatives.

ATTY. RONDAIN:

Okay.

Q. **So, the short answer to my question is, "No, you did not care to look at his books?**

MS. FLOR:

A. **Yes**."[231] (Boldfacing supplied)

As regards the **second condition** to justify the use of the net worth method, the **prosecution also failed to prove the possible source/s of income** that would account for the increases in accused's net worth. There is no evidence offered by the prosecution which will show the likely source of income and the corresponding income derived therefrom by the accused during the concerned taxable years.

Revenue Memorandum Order (RMO) No. 15-95 enumerates certain proofs of a likely source of income, *viz.*:

(1) Demonstrating that there were specific omissions of income items by the taxpayer in his income tax return.

(2) A showing that the nature of the taxpayer's business is such that it has capacity of generating a substantial income.

(3) Proofs of underdeclaration of income by the existence of unregistered sales invoices, which were not recorded in the books;

(4) Findings of unrecorded purchases;

(5) Existence of business permits, license from government agencies as to the types of businesses the taxpayer is engaged in;

(6) Keeping separate sets of books- one registered and the other reflecting the correct transactions of a business.

(7) Use of false invoices or documents, and

(8) Willful destruction of accounting records.

The prosecution failed to present any proof that will point to accused's likely source income which he failed to declare in his ITRs.

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[231] December 4, 2013 TSN, pp. 58-61.

First, the prosecution failed to point out the particular item of income which was not reported in accused's ITR. The prosecution's witness, Atty. Flor merely stated the alleged *"discrepancy, unreported income"* when she was asked about the specifically omitted income item in the accused's ITR. Such response of the witness appears to be senseless as it can be considered a statement without any basis in law. If the prosecution has evidence of the income which the accused failed to report in his ITR, it should have identified with particularity said specific income item/s which were not allegedly declared therein. The prosecution should have pointed on which of those income items listed in Section 32 of the NIRC of 1997 that the accused failed to report in his ITR (albeit some of the items enumerated therein are not required to be reported in the ITR as they are undeniably subject to final tax), *viz.*:

(i) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;

(ii) Gross income derived from the conduct of trade or business or the exercise of a profession;

(iii) Gains derived from dealings in property;

(iv) Interests;

(v) Rents;

(vi) Royalties;

(vii) Dividends;

(viii) Annuities;

(ix) Prizes and winnings;

(x) Pensions; and

(xi) Partner's distributive share from the net income of the general professional partnership.

Second, the prosecution failed to establish which of the businesses of the accused is capable of generating the alleged undeclared income. The prosecution is required to prove that the nature of accused's businesses is capable of generating the alleged undeclared income. The prosecution witness, Atty. Flor, even admitted that she did not investigate any business of the accused that could have possibly generated the alleged undeclared income, *viz.*:

"ATTY. RONDAIN:

Q. Did you investigate of **any business** that could have generated income?

MS. FLOR:

A. **No, Sir**, we have no LA." [232] (Boldfacing supplied)

Third, the prosecution failed to prove the underdeclaration of income by the existence of unregistered sales invoice, evidencing sales which were not recorded in the books of the accused. A perusal of the evidence presented by the prosecution reveals that no testimonial or documentary evidence pertaining to said unregistered sales invoice was ever presented. It was not even mentioned in the joint Complaint-Affidavit filed with the DOJ. Moreover, Atty. Flor also testified that she did not find proof of undeclared income to verify the existence of unregistered invoices, *viz.*:

"ATTY. RONDAIN:

Q. Did you find **proof of undeclared income** to verify the existence of unregistered invoices, etc.?

MS. FLOR:

B. **No, Sir**." [233] (Boldfacing supplied)

Fourth, there is no evidence showing a finding of unrecorded purchases. Atty. Flor testified that she did not find evidence of unrecorded purchases, viz.:

"ATTY. RONDAIN:

Q. Did you find evidence of **unrecorded purchases**?

MS. FLOR:

A. **No, Sir**." [234] (Boldfacing supplied)

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[232] December 4, 2013 TSN, p. 69.
[233] December 4, 2013 TSN, p. 70.
[234] December 4, 2013 TSN, p. 70.

Fifth, there is no documentary evidence presented by the prosecution showing the existence of business permits and licenses from government agencies as to the types of businesses accused is engaged in. Atty. Flor testified that she did not find any business permits showing that accused had other businesses, *viz.*:

> "ATTY. RONDAIN:
>
> Q. Did find any **business permits or licenses** showing that Mikey Arroyo had other businesses?
>
> MS. FLOR:
>
> A. As to the business permits we were not able, (interrupted).
>
> ATTY. RONDAIN:
>
> Q. No?
>
> MS. FLOR:
>
> A. **No**. But as to the license of the corporation in which the accused invested or served as a director or president, we were able to get one.
>
> ATTY. RONDAIN:
>
> Q. In fact, you didn't need to because they were declared in the SALN, yes?
>
> MS. FLOR:
>
> A. Yes, Sir."[235] (Boldfacing supplied)

Sixth, the prosecution failed to prove that accused kept separate sets of books - one registered and the other reflecting the correct transactions of a business. Atty. Flor testified that she did not find evidence of double bookings, *viz.*:

> "ATTY. RONDAIN:
>
> Q. Did find evidence of **double bookings**?
>
> MS. FLOR:
>
> A. **No, Sir.**"[236] (Boldfacing supplied)

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[235] December 4, 2013 TSN, p. 71.
[236] December 4, 2013 TSN, p. 72.

Seventh, the prosecution failed to prove by documentary evidence that would show accused's use of false invoices or documents. Atty. Flor also testified that she did not see any false invoices or documents, _viz._:

> "ATTY. RONDAIN:
>
> Q. Did you see any **false invoices or documents**, Ma'am?
>
> MS. FLOR:
>
> A. **No, Sir**." [237] (Boldfacing supplied)

Eighth, the prosecution failed to show that there is willful destruction of accounting records of the accused. In fact, Atty. Flor testified that she did not see any evidence of destruction of accounting records, _viz._:

> "ATTY. RONDAIN:
>
> Q. Did you see any evidence of **destruction of accounting records**, Ma'am?
>
> MS. FLOR:
>
> A. **No, Sir**." [238] (Boldfacing supplied)

As the foregoing indicators of the likely source of income are absent in this case, the BIR's use of the net worth method was not justified. Without evidence on the likely source of income and the corresponding income derived therefrom by the accused during the concerned taxable years, the Court casts a serious doubt as to the veracity of the offenses charged against the accused.

The increase in accused's net worths in years 2004, 2006 and 2007 could not conclusively be presumed as arising from his receipts of income which should have been declared in his ITR and subjected to the regular income tax rates prescribed under Section 24 of the NIRC of 1997, as amended. The probability that the increase in accused's net worths in years 2004, 2006 and 2007 resulted from his receipt of an ordinary income, as speculated by the prosecution, is equal to the probability that the increase in his net worths arose from donations, gifts, inheritance, and/or from other items of income

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[237] December 4, 2013 TSN, p. 72-73.
[238] December 4, 2013 TSN, p. 73

subjected to final tax, such as dividends, royalties, interests, capital gains.

Regarding the **third condition for the use of the net worth method**, the complainant also failed to comply therewith. While the BIR was able to come up with its **Computation of Unreported Taxable Income Based on Net Worth from 2004-2009**[239] of the accused and his wife, **the same failed to consider the correct beginning net worth particularly for 2004**. Shown below is the portion of the said computation for reference purposes:

	31-Dec-02	2003 NO SALN WITH ANNUAL INCOME TAX RETURN	31-Dec-04	31-Dec-05	31-Dec-06	31-Dec-07
TOTAL ASSETS	5,003,023.79	1,063,300.28	76,531,403.96	138,751,403.96	167,971,403.96	154,972,409.95
TOTAL LIABILITIES	0.00	0.00	0.00	61,800,000.00	78,366,000.00	58,224,476.29
NET WORTH	**5,003,023.79**	**1,063,300.28**	**76,531,403.96**	76,951,403.96	89,605,403.96	96,747,933.66
Beginning Net Worth	**5,721,787.29**	**5,003,023.79**	**6,066,324.07**	76,531,403.96	76,951,403.96	89,605,403.96
INCREASE IN NET WORTH		6,066,324.07	70,465,079.89	420,000.00	12,654,000.00	7,142,529.70
LESS: REPORTED TAXABLE INCOME PER RETURN			2,489,375.00	378,000.00	1,738,500.00	376,500.00
UNREPORTED INCOME			67,975,704.89	42,000.00	10,915,500.00	6,766,029.70
BASIC TAX DUE			21,717,225.56	4,300.00	3,457,960.00	2,130,129.50
SURCHARGE 50%			10,858,612.78	2,150.00	1,728,980.00	1,065,064.75
INTEREST (UP TO APRIL 15, 2011)			26,060,670.67	4,300.00	2,766,368.00	1,278,077.70
DEFICIENCY INCOME TAX			58,636,509.01	10,750.00	7,953,308.00	4,473,271.95

As it appears, the beginning net worth in 2004 of P6,066,327.07 was taken from the increase in net worth in 2003. The prosecution witness, Atty. Flor testified that they used a different formula for the year 2003 as they were not able to get a copy of the 2003 SALN of the accused.[240] For 2003, she accordingly used the ending net worth of 2002 as the beginning net worth for 2003 and added the accused's 2003 compensation income as appearing in his ITR[241] to arrive at his ending net worth for 2003.[242] In other words, the BIR was able to come up with the 2003 ending net worth by adding the 2002 net worth of the accused in the amount of P5,003,023.79[243] and accused's income per 2003 ITR of P1,063,300.28.[244]

[239] Exhibit "Y", CTA Crim. Case No. O-247 Docket, p. 612.
[240] June 19, 2013 TSN, p. 42.
[241] June 19, 2013 TSN, p. 80.
[242] July 17, 2013 TSN, p. 26.
[243] Exhibits "I" and "8", CTA Crim. Case No. O-247 Docket, p. 523.
[244] Exhibits "J" and "9", CTA Crim. Case No. O-247 Docket, pp. 524-526.

The beginning net worth of **P6,066,327.07** for 2004 as used in the computation of the complainant is patently erroneous. Seemingly, complainant had not considered accused's 2002 Supplemental/Amended SALN containing a net worth of **P68,736,539.39**,[245] or even accused's SALN for 2003 containing a net worth of **P72,727,511.06**,[246] which are clearly higher than the amount considered by the BIR.

Lastly, there is no showing that the method used by the complainants reflects accused's income during the concerned taxable years with reasonable accuracy and certainty as the complainants failed to consider the books of accounts and other accounting records of the accused, and they merely based their conclusion of unreported income on the increase in net worths based on the SALNs and the income declared in the ITRs. The prosecution did not observe the proper computation of the net worth method as they failed to consider the non-taxable income items of the accused.

To prove accused's failure to supply correct and accurate information in his ITRs for the years 2004 and 2006, the prosecution presumed that accused has undeclared income to the extent of the increase in his net worth. But **the prosecution failed to establish the likely source and the nature of the alleged undeclared income**, that is, **whether it is an ordinary income that should have been reported in the ITRs or that said undeclared income was <u>not</u> sourced from bank deposits, investments in shares, donations or inheritance.** If the undeclared income is a passive income, accused is not required to declare the same in his ITRs as said income is subject to final tax.

Since there is absence of proof showing accused's likely source of other income in 2004 and 2006, and the corresponding income therefrom which were not declared in the ITRs for the said years, and considering the inappropriate application of the net worth method, **the prosecution has failed to prove beyond reasonable doubt the second element of the crime, which is the alleged failure of accused to supply correct and accurate information in the return, as charged in CTA Crim. Case Nos. O-247 and O-248**.

The absence of one of the elements of the crime charged dispenses the requirement to elucidate on the third element.

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[245] Exhibit "43", CTA Crim. Case No. O-247 Docket, p. 620-623.
[246] Exhibit "32", CTA Crim. Case No. O-247 Docket, p. 168.

Failure to File Income Tax Return

Accused was also indicted due to his alleged failure and/or refusal to file his ITR for 2007.

The aforesaid Computation of Unreported Taxable Income as shown above discloses that the complainants considered the amount of P376,500.00 as reported taxable income of accused per ITR of 2007.[247] The same amount was considered in the BIR's Preliminary Assessment Notice and the Details of Discrepancies of the Formal Letter of Demand.[248] The Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) of accused for 2007, issued by his employer - House of Representative, also shows the same amount of taxable compensation income of accused, with the corresponding tax due of P73,550.00 that matches with the total amount of taxes withheld by his employer.[249] The prosecution witness, Atty. Flor even testified that the amount was taken from the Annual Information Return on Income Tax Withheld on Compensation filed by the House of Representatives before BIR RDO 39.[250] Another witness of the prosecution in the person of Ms. Victoria V. Santos further confirmed that accused was included in the alpha list of employees of the House of Representative, and pointed out its significance that it is considered as his income tax return if he does not have any other income.[251]

The foregoing documentary and testimonial evidence negates the accusation of the prosecution against the accused.

Section 2.83.4 of Revenue Regulations (RR) No. 02-98, as amended by RR No. 03-02, provides:

> "Section 2.83.4. **Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income.** — Individual taxpayers **receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer** (tax due equals tax withheld), **shall not be required to file BIR Form No. 1700**. In lieu of BIR Form No. 1700, the **Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes** (BIR Form No.

[247] Exhibit "Y", CTA Crim. Case No. O-247 Docket, p. 612
[248] Exhibits "FF" to "FF-3" and "GG" to "GG-3", O-247 CTA Crim. Case No. O-247 Docket, pp. 600-607.
[249] Exhibit "51", CTA Crim. Case No. O-247 Docket, p. 649.
[250] July 17, 2013 TSN, p. 49.
[251] May 7, 2014 TSN, p. 11.

1604-CF) (hard copy) **filed by their respective employers, duly stamped "received" by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees**.

The following individuals, however, are not qualified for substituted filing and therefore, still required to file BIR Form No. 1700 in accordance with existing regulations:

(A) Individuals deriving compensation from two or more employers concurrently or successively at anytime during the taxable year.

(B) Employees deriving compensation income, regardless of the amount, whether from a single or several employers during the calendar year, the income tax of which has not been withheld correctly (i.e. tax due is not equal to the tax withheld) resulting to collectible or refundable return.

(C) Employees whose monthly gross compensation income does not exceed Five Thousand Pesos (P5,000.00) or the statutory minimum wage, whichever is higher, and opted for non-withholding of tax on said income.

(D) Individuals deriving other non-business, non-profession-related income in addition to compensation income not otherwise subject to a final tax.

(E) Individuals receiving purely compensation income from a single employer, although the income tax of which has been correctly withheld, but whose spouse falls under Section 2.83A(A), (B), (C) and (D) of these Regulations.

(F) Non-resident aliens engaged in trade or business in the Philippines deriving purely compensation income, or compensation income and other non-business, non-profession-related income.

xxx xxx xxx."(Boldfacing supplied)

The prosecution witnesses testified that: (i) the amount of P376,500.00, as shown in the computation above, was taken from the Annual Information Return on Income Tax Withheld on Compensation (BIR Form 1604CF) filed by the House of Representatives before BIR RDO 39; and (ii) the accused is included in the alpha list of employees of the House of Representative.

A careful evaluation of the evidence presented by the prosecution shows the following:

a) Accused earned compensation income from his employer, the House of Representatives;

b) The House of Representatives withheld income tax thereon;

c) There was no indication that the amount withheld by the House of Representative was incorrect; and,

d) There was no proof that the accused derived income from other sources.

Based on the foregoing, accused cannot be convicted of the crime of failure to file ITR under Section 255 of the NIRC of 1997,a s amended, as he was not required to file a separate ITR for the year 2007. His employer's Annual Information Return on Income Tax Withheld on Compensation (BIR Form 1604CF) is considered as his "substitute" ITR pursuant to Section 2.83.4 of RR No. 02-98, as amended by RR No. 03-02.

As in the other two (2) cases, the prosecution again failed to prove the second element. To reiterate, the Court need not belabor on discussing the other elements where one of the elements of the crime was not proven to exist.

*** *** ***

Clearly, the prosecution sought to establish the culpability of the accused by showing an increase in the latter's net worth. It is the theory of the prosecution that the accused failed to supply correct and accurate information (CTA Crim. Case Nos. O-247 & O-248) and failed to file ITR (CTA Crim. Case No. O-249) relative to his true and correct income tax, albeit in truth - - the increase in his net worth constituted an "unreported/undeclared income".

In *esse*, the prosecution draws two (2) inferences from the single circumstance that the net worth of the accused increased:

(i) **First - that the increase in net worth represents an income; and,**

(ii) **Second - that the income that resulted in an increase in net worth is not in the nature of a passive income nor coming from a source that need not be reported in an income tax return, such as proceeds of donation or inheritance.**

The two (2) inferences derived by the prosecution from a mere examination of accused SALNs showing the increase in accused's net worth constitute a "double presumption" that is neither sanctioned by evidentiary rules or jurisprudence nor sufficient to rebut the constitutional presumption of innocence to which the accused is entitled.

In order to convict a person accused of a crime on the strength of mere circumstantial evidence alone, it is incumbent upon the prosecution to present such circumstantial evidence, which will and must necessarily lead to the conclusion that the accused is guilty of the crime charged beyond reasonable doubt, **excluding all and each and every reasonable hypothesis consistent with his innocence**.

The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be **consistent with the accused's guilt and inconsistent with his innocence**.[252] In a nutshell, **the circumstantial evidence must exclude the possibility that some other circumstances were present that could exonerate the accused from the crime charged.**

As exhaustively discussed earlier, in these consolidated cases, the circumstantial evidence that there was an increase in accused's net worths for the years 2004, 2006 and 2007 does not *ipso facto* lead to the conclusion that accused derived ordinary income that should have been declared in his ITRs and subjected to the regular income tax rates prescribed under Section 24 of the NIRC of 1997, as amended. Truth to tell, **the probability that the increase in accused's net worth resulted from his receipt of an ordinary income, subject to regular income tax rates, is equal to the probability that the increase arose from donations, gifts, inheritance, and/or from passive or other income subjected to final tax, such as dividends, royalties, interests, capital gains.**

The circumstances established by the prosecution may undeniably create an interesting basis to speculate that the accused committed the crimes charged. **Mere speculations and probabilities, however, cannot substitute for the required proof to establish the guilt of an accused beyond reasonable doubt.**[253]

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[252] People vs. Canlas, G.R. No. 141633, December 14, 2001.
[253] People vs. Canlas, G.R. No. 141633, December 14, 2001.

It is basic truism that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of defense evidence.[254] Failing to prove the required quantum of evidence, the presumption of innocence must prevail and accused should be acquitted.[255]

All told, accused, therefore, deserves to be exonerated for the offenses charged in CTA Crim. Case Nos. O-247, O-248 and O-249 for failure of the prosecution to prove all the elements of the crime beyond reasonable doubt.

Civil Action for the Recovery of Civil Liability

Section 7(b)(1) of Republic Act (RA) No. 1125, as amended, states that "[a]ny provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be **simultaneously instituted** with, and **jointly determined in the same proceeding by the CTA**, the **filing of the criminal action shall be 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."

Assessment is void ab initio

Records disclose that the Formal Letter of Demand (FLD) with Details of Discrepancies dated January 10, 2012 demanded from accused and his wife the payment of deficiency income tax and value-added tax for the years 2004 to 2009 within the time shown in the allegedly enclosed assessment notice. There is, however, nothing in the records which would show that, indeed, an assessment notice was issued and enclosed to FLD. The last paragraph of the FLD reads:

> "In view thereof, you are hereby requested to pay your aforesaid deficiency income and value added tax liabilities through the duly authorized agent bank in which you are enrolled **within the time shown in the enclosed assessment notice**." (Boldfacing supplied)

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[254] Alferez vs. People, G.R. No. 182301, January 31, 2011.
[255] People vs. Santos, G.R. No. 175593, October 17, 2007.

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing **of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall <u>issue an assessment</u> based on his findings.**" (Boldfacing and underscoring supplied)

To implement the provisions of Section 228, *supra*, RR No. 12-99 was issued, Section 3.1.4 of which reads:

> "3.1.4. *Formal Letter of Demand and Assessment Notice.* - The **formal letter of demand <u>and</u> assessment notice shall be issued** by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void.* xxx **The same shall be sent to the taxpayer only by registered mail or by personal delivery**. xxx" *(Emphases supplied)*

Clearly, a formal letter of demand **<u>AND</u>** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.4 of RR No. 12-99 indicates the mandatory nature of the requirement**.[256]

In the absence of a valid assessment notice, there is no basis for the BIR to issue the FLD demanding payment of the alleged deficiency taxes for the years 2004 to 2009. Since there was no assessment notice which was supposed to indicate the **due date** when the deficiency taxes must be paid, no proper demand for the payment of the deficiency taxes within a specific period was made.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[257] the Supreme Court emphasized the

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[256] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.
[257] G.R. No. 128315, June 29, 1999.

requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
>
> xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the <u>period</u> within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxx xxx." (Boldfacing and underscoring supplied)

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.,***[258] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within*

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[258] G.R. No. 215957, November 9, 2016.

> *the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (Boldfacing supplied)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, no assessment can be regarded as valid absent a specific date or period within which the alleged tax liabilities must be settled or paid by the taxpayer.

In sum, the assessment in this case, being void, the same bears no fruit[259] and may be slain at sight.

The act or omission from which the civil liability might arise did not exist

Even assuming the validity of the assessment, still, accused may not be held civilly liable. As afore-discussed, **the prosecution miserably failed to show by clear, convincing and competent evidence that accused derived any taxable income, much less the specific amount thereof that was not declared in his ITRs for the years 2004, 2006 and 2007. In other words, evidence is wanting of the fact upon which the civil liability may arise.**[260]

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[259] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[260] Section 2, Rule 120, Rules of Court.

As oft-repeated, the deficiency taxes were computed using the net worth method wherein the BIR compared the increase in accused's net worth and the reported taxable income and considered the difference as unreported income.

Well-settled is the rule that assessments must be based on actual facts and not mere assumptions or presumptions. In ***Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation,***[261] the Supreme Court upheld the decision of the CTA when it cancelled the assessment issued by the BIR against Island Garment Manufacturing Corporation on alleged "overstated" exportations for being merely based on assumption or on mathematical computations. The Supreme Court ruled:

> "The basis of respondent corporation's deficiency income and advance sales taxes for 1962 and 1963 was held by petitioner to be the overdeclaration of its re-exportation of finished embroidered goods, computed as follows: xxx xxx
>
> "**This discrepancy was arrived, at by the petitioner after an inspection of the boxes in which the finished goods were packed and concluding through "mathematical computations" that it was impossible for respondent corporation to re-export back in said boxes the total number of pieces it claims to have manufactured**.
>
> "In disposing of petitioner's contention, respondent Court held:
>
> > "**By alleging that he employed mathematical computations in ascertaining the quantity of finished products actually manufactured and exported by petitioner, respondent concedes at least that his assessments were based on mere inferences and presumptions. Likewise, by stating that it was physically impossible for such number of cartons with such volume capacity to contain such exportation, or for petitioner to have manufactured and exported such finished garments, respondent admits that his assessments were not based on actual facts but merely on approximations and calculations**. And [in averring] that the raw material discrepancies in yards, [were] arrived at by mere inferences and presumptions, [and] subsequently became the basis of the assessments for advance sales tax and for income tax, respondent failed to indicate his nebulous position how the advance sales tax or the undeclared income from sales of embroidery textile materials in pesos and centavos were arrived at. Moreover, since fraud is

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[261] G.R. No. L-46644, September 11, 1987

> imputed to petitioner, fraudulent intent was deduced from surmises and conjectures, unsupported by clear and [convincing] proof to this effect.
>
> "An assessment fixes and determines the liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. The assessment must be based on actual facts**. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. (Collector of Internal Revenue vs. Benipayo, L-13656, January 31, 1962, 4 SCRA 182). . . . " (Boldfacing supplied)

Considering that the assessment issued against the accused was based on mere presumption and not on actual facts, the same is invalid and may not be the basis of accused's civil liability.

WHEREFORE, in view of the foregoing, accused **Juan Miguel M. Arroyo** is hereby **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-247, O-248 and O-249 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The civil actions to collect the tax deficiencies that are deemed instituted with the aforestated criminal cases are likewise **DISMISSED** as the act or omission from which the civil liability might arise did not exist.

The cash bail bond posted by accused is hereby **CANCELLED** and ordered **RELEASED** to the accused upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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