REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case Nos. O-064 & O-065

For: Violation of Section 255 of the National Internal Revenue Code of 1997

- versus-

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

ROGELIO A. TAN,
Accused.

Promulgated: JUN 27 2012
Afternoon 1:38 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

Accused Rogelio A. Tan is being charged, as President and General Manager of JADEWELL PARKING SYSTEMS CORPORATION, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

STATEMENT OF FACTS

Plaintiff People of the Philippines is represented by complainant Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.[1]

Accused Rogelio A. Tan is the President of JADEWELL PARKING SYSTEMS CORPORATION (hereinafter referred to as "Jadewell"), a domestic corporation duly organized and existing under and by virtue of the laws of the

[1] Plaintiff's Memorandum, docket, p. 1370.

Philippines, engaged in management and operation of parking areas anywhere in the Philippines.[2]

On June 26, 2000 and January 25, 2001, Jadewell entered into a Memorandum of Agreement[3] with the respective cities of Baguio and Caloocan, where the former will install, manage and operate a parking system in the designated city streets and parking spaces for a minimum guaranteed period of five (5) years against rescission and with a term of twelve (12) years. The cities' share is twenty percent (20%) of the gross profits of the operations or fifty percent (50%) of the net profits, whichever is higher.

In 2005, an investigation of Jadewell was conducted by the Special Investigation Division of the BIR Region 2 - Baguio City, on the basis of confidential information that Jadewell is involved in a tax evasion scheme. However, upon finding that Jadewell transferred its main office to Manila, the case was forwarded to the BIR's Special Investigation Division in Manila, which conducted a preliminary investigation on Jadewell's accessible records.[4] The investigation initially resulted in the findings of an undeclared gross profit/income for the years 2002 and 2003, details are as follows:[5]

Total Share of the City of Baguio from 2000 to 2003 per Letter of Jadewell to the Baguio City Mayor		Php 8,440,467.44
Divided by the percent of share on the gross profit per MOA		20%
Total gross profit for the years 2000, 2001, 2002 and 2003		42,202,337.20
Less: Gross profit declared per return for the years 2000 and 2001: (Note: For 2000 & 2001 they filed at BIR-Baguio and Letter of Authority was issued thereon)		
2000	Php 186,798.85	
2001	6,167,872.65	6,354,671.50
Total gross profit for the years 2002 and 2003		35,847,665.70
Less: Gross profit declared per return for the years 2002 and 2003:		

[2] Counter-affidavit of Accused, docket, p. 118.
[3] Exhibits "O" and T".
[4] Exhibits "A" and "C"; and TSN, June 18, 2008, pp. 16-19.
[5] Exhibit "E".

2002	Php 12,922,155.25	
2003	4,270,080.00	
		17,192,235.25
Undeclared gross profit/income for the years 2002 and 2003		**Php18,655,430.45**

Pursuant thereto, the issuance of a Letter of Authority for taxable years 2002 to 2004 was recommended. Eventually, a Letter of Authority dated February 28, 2006[6] was issued, but allegedly unheeded. A Second Notice[7] and Final Notice[8] for Jadewell to submit documents or records relative to the investigation were respectively sent on March 9, 2006 and March 24, 2006, but likewise allegedly ignored by Jadewell. Consequently, Summons and/or *Subpoena Duces Tecum* was issued on May 25, 2006.[9]

Further investigation was conducted by the BIR based on the best evidence obtainable.[10] The investigation revealed, among others, discrepancies in the income reported by Jadewell for taxable years 2002, 2003, and 2004 in the respective amounts of P5,082,425.46, P86,884,170.86, and P79,161,659.69, computed as follows:[11]

Total Revenue per Information	2002	2003	2004
Baguio City	P 13,734,449.11	P 90,463,263.80	P76,874,792.49
Caloocan City	12,437,097.68	47,064,337.47	26,795,381.31
Total Inclusive of VAT	26,171,596.79	137,527,601.27	103,670,173.80
Divided by	110%	110%	110%
Total Revenue per Info exclusive of VAT	23,792,360.72	125,025,092.06	94,245,612.55
Less: Total Revenue/Sales per Return (F/S)	18,709,935.26	38,140,921.20	15,083,952.86
Undeclared Income	5,082,425.46	86,884,170.86	79,161,659.69

6 Exhibit "G".
7 Exhibit "H".
8 Exhibit "I".
9 Exhibit "L".
10 TSN, July 9, 2008, pp 48-64.
11 Exhibit "X".

The undeclared income resulted in deficiency income tax and VAT as follows:

	2002	2003	2004
Deficiency Income Tax Due	P 3,524,112.05	P54,684,183.03	P44,757,351.74
Deficiency VAT due	1,123,564.15	17,469,669.30	14,333,682.44
Total	P 4,647,676.20	P72,153,852.33	P59,091,034.18

On October 27, 2006, the then Commissioner of Internal Revenue referred the case to the Department of Justice for preliminary investigation and the filing of information for the alleged violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, brought about by the purported substantial under-declaration by Jadewell of its income for taxable years 2003 and 2004.[12] The alleged under-declaration of income for taxable year 2002 was not pursued, being less than thirty percent (30%) of the income/sales per Income Tax Returns.[13] Hence, the instant cases, where accused Tan is being charged for two counts of violation of Section 255 of the NIRC of 1997, as amended, docketed as Criminal Case Nos. O-064 and O-065, respectively.

Separate Informations for Criminal Case No. O-064 and Criminal Case No. O-065 were filed on September 28, 2007 by State Prosecutor Irwin A. Maraya. But, the Information for Criminal Case No. O-064 was ordered to be amended. The Amended Information was filed on November 29, 2007, which reads:

> "The undersigned State Prosecutor of the Department of Justice accuses ROGELIO A. TAN of violation of Section 255 of Republic Act No. 8424, otherwise known as the 'Tax Reform Act of 1997,' as amended, committed as follows:
>
> > 'That on or about the 15th day of April, 2005, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the President and General Manager of JADEWELL PARKING SYSTEMS CORPORATION **(JADEWELL)**, a domestic

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[12] Exhibit "Y".
[13] TSN, August 20, 2008, p. 55.

corporation engaged in the business of managing and collecting fees in parking areas in the Philippines, and abroad, earning income from its contracts with the Cities of Baguio and Caloocan, to manage and collect fees in designated parking areas located in said cities, and as such liable to pay taxes with the corresponding duty to supply correct and accurate information in its **Income Tax Return** (ITR), did then and there, knowingly, willfully, unlawfully and feloniously supply incorrect and inaccurate information in JADEWELL's ITR filed with the Bureau of Internal Revenue for taxable year 2004, that it earned an income of only Php15,083,952.86 when its actual income for said taxable year based on the record of the Office of the Treasurer in both Cities of Baguio and Caloocan, was Php94,245,612.55, to the damage and prejudice of the government in the total amount of Php49,871,845.61 in deficiency income and value added taxes due it as a result thereof.

By supplying incorrect and inaccurate information in its ITR that its income for 2004 was only Php15,083,952.86 instead of its actual income of Php94,245,612.55, said accused had under-declared the income of JADEWELL by more than 30%, or 525% to be exact.'

CONTRARY TO LAW."

Whereas, the Information for Criminal Case No. O-065 provides as follows:

"The undersigned State Prosecutor of the Department of Justice hereby accuses ROGELIO A. TAN of the offense of violation of Section 255 of Republic Act No. 8424, otherwise known as the 'Tax Reform Act of 1997,' as amended, committed as follows:

'That on or about the 15th day of April, 2004, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the President and General Manager of JADEWELL PARKING SYSTEMS CORPORATION (JADEWELL), a domestic corporation engaged in the business of managing and collecting fees in parking areas in the Philippines, and abroad, earning income from its contracts with the Cities of Baguio and Caloocan, to manage and collect fees in designated parking areas located in said cities, and as such liable to pay taxes with corresponding duty to supply correct and accurate information in its Income Tax Reform (ITR), did then and there, knowingly, willfully, unlawfully and feloniously supply incorrect and inaccurate information in the ITR it filed with the Bureau of Internal Revenue for taxable year 2003, that it earned an income of only P38,140,921.00 when its actual income for said taxable year based on the record of the Office of the Treasurer in both Cities of Baguio and Caloocan, was P125,025,092.00, to the

> damage and prejudice of the government in the total amount of Php54,737,027.64 in deficiency income and value added taxes due it as a result thereof.
>
> By supplying incorrect and inaccurate information in its ITR that its income for 2003 was only Php38,140,921.00 instead of its actual income of Php125,025,092.00, said accused had under-declared the income of JADEWELL by more than 30% or 228% to be exact.'
>
> **CONTRARY TO LAW"**

On December 12, 2007 and January 7, 2008, accused was respectively arraigned for Criminal Case Nos. O-065 and O-064, to which charges accused pleaded "not guilty".

Accused filed a motion to quash the Amended Information for Criminal Case No. O-064 on January 28, 2008 and an Amended Motion to Quash on February 7, 2008 before the First Division of this Court, where the said case was pending, on the ground that he is charged with knowingly and willfully providing false information in Jadewell's Income Tax Return (ITR) but the prosecution failed to present or attach to the record the assailed ITR. The prosecution interposed their comment/opposition thereto on February 26, 2008. The Amended Motion to Quash was denied via Resolution dated March 25, 2008 and the motion for reconsideration was likewise denied in a Resolution dated May 22, 2008.

On February 7, 2008, accused filed before the Second Division of this Court, where Criminal Case No. O-065 was pending, a motion to consolidate said case with Criminal Case No. O-064. The motion was granted subject to the conformity of the First Division. On May 8, 2008, the First Division of this Court confirmed the consolidation and the cases were ordered consolidated. The First Division jointly heard the consolidated case.

On February 6, 2009, the prosecution offered in evidence Exhibits "A" to "GG-5[14]" for Criminal Case No. O-064 and Exhibits "A" to "FF-11" for Criminal Case No. O-065. The prosecution's pieces of documentary evidence were all admitted in a Resolution dated March 27, 2009. On the other hand, the list of the prosecution's witnesses is as follows:

1. Fidel Ballesteros - Revenue Officer of Special Investigation Division of BIR Revenue Region No. 6, Manila;
2. John Abris – Revenue Officer previously assigned at the Special Investigation Division of BIR Revenue Region No. 6, Manila;
3. Marieta Catriz – Operations Officer, City Treasurer's Office, Baguio City;
4. Thelma Manaois – City Treasurer, Baguio City;
5. Julieta Cruz – employee, City Treasurer's Office, Caloocan City;
6. Maribeth Aquino – then Assistant Division Chief, City Treasurer's Office, Caloocan City;
7. Lourdes Jose – City Treasurer, City Treasurer's Office, Caloocan City;
8. Elizabeth Cruz – Administrative Officer, City Auditor's Office, Caloocan City;
9. Atty. Joanne Rañada – Securities Counsel, Securities and Exchange Commission; and
10. Sheila Cuida – employee, City Treasurer's Office, Caloocan City.

After being granted leave, accused filed his "Motion to Dismiss (By Way of Demurrer to Evidence)" on June 11, 2009. The Court denied the motion in a Resolution dated September 4, 2009, upon finding that there is a *prima facie* case against the accused. Accused prayed for reconsideration on September 29, 2009, but it was denied in a Resolution dated November 26, 2009. Unfazed, accused elevated the issue with the Supreme Court. However, the Supreme Court dismissed accused's petition in a Resolution dated February 3, 2010 for his failure to sufficiently show the commission of "grave abuse of discretion" by this Court. On March 24, 2010, the accused filed a "Motion for Reconsideration", which to this date, is still pending resolution before the Supreme Court.

[14] Actually offered as Exhibit "G-5".

In the meantime, the First Division of this Court issued an Order dated January 7, 2010, whereby the instant consolidated cases were transferred to the Third Division as a result of this Court's full expansion of its membership in accordance with CTA Administrative Circular No. 01-2010.

On July 8, 2011, accused filed his Offer of Evidence[15] and Exhibits "1" to "8", "27", "27-A", "73", "73-A", "74", "74-A", "75", "75-A", "76", "76-A", "84", "84-A", "85", "85-A", "85-B" to "85-M", "85-N" to "85-CC", "85-DD" to "85-SS", "85-TT", to "85-EEE", "85-FFF" to "85-QQQ", "85-RRR" to "85-CCCC", "86", "86-A", "86-A-1" to "86-A-16" were admitted in a Resolution dated September 13, 2011. Accused and the following witnesses gave their testimonies:

1. Eufrocina C. Lirio – external auditor of Jadewell; and
2. Manuel S. Ocana – internal auditor of Jadewell during the time material to the complaint.

The case was submitted for decision on October 20, 2011, considering the "Memorandum for the Defense" filed on October 7, 2011 and the "Plaintiff's Memorandum" filed on October 17, 2011.

STATEMENT OF ISSUE

Whether or not accused Rogelio A. Tan, as the General Manager and President of Jadewell, knowingly and willfully failed to supply correct and accurate information in Jadewell's Income Tax Returns for taxable years 2003 and 2004.

RULING/DISCUSSION

After weighing the parties' arguments *vis-a-vis* the pieces of evidence presented, this Court finds the accused guilty.

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[15] Docket, p. 1128.

The relevant penal provision of the National Internal Revenue Code of 1997, as amended, is Section 255, which is quoted as follows:

> "SEC. 255. ***Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*** — **Any person required under this Code or by rules and regulations promulgated thereunder to** pay any tax, make a return, keep any record, or **supply correct and accurate information, who willfully fails to** pay such tax, make such return, keep such record, or **supply such correct and accurate information**, or withhold or remit taxes withheld or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." (*Emphasis supplied*)

In relation thereto, if the taxpayer is a corporation, the criminal liability is lodged upon its responsible officers. Sections 253(d) and 256 of the NIRC of 1997 read:

> "SEC. 253. *General Provisions.* —
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."
>
> "SEC. 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

The elements that must be proven beyond reasonable doubt by the prosecution are the following:

a. Existence of an obligation to supply correct information;
b. Failure to supply correct information;
c. Such failure was willful; and
d. In case of corporate taxpayers, that the accused is the responsible officer.

Existence of an obligation to supply correct information

The Court affirmatively finds the existence of this element. Undisputedly, every corporation subject to tax is required to render or provide a true and accurate income tax return, be it quarterly or annually. The obligation is clearly demonstrated in Section 52(A) of the NIRC of 1997, as amended, to wit:

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

The foregoing provision also imposes upon the above-named officers the obligation to file the return and correspondingly, the obligation to make sure that the return being filed is true, correct and accurate. The President is among the named officers given such obligation.

Failure to supply correct information

The prosecution contends that accused violated Section 255 when Jadewell willfully failed to supply correct and accurate information, when it declared in its Income Tax Returns for taxable years 2003 and 2004 an income of only P38,140,921.20 and P15,083,952.86, respectively, when its actual income based on the Summary of Payments, given to Jadewell by the respective Office of the Treasurer of the cities of Baguio and Caloocan, showed the income of Jadewell to be P125,025,092.00 for 2003 and P94,245,612.55 for 2004.

For his part, accused argues that the formula used by the BIR to arrive at the above-mentioned amounts is erroneous. The BIR only took into consideration the certifications issued by the respective treasurer's offices of Baguio and Caloocan, which only pertain to the cities' share in the parking revenues generated by Jadewell. The BIR did not consider the expenses or indirect costs incurred by Jadewell in its operations, which was not included in the computation of the share of the Cities of Baguio and Caloocan, but should be considered and deducted from the total revenue of Jadewell for purposes of filing the income tax returns.

Accused posits that a mechanism for monitoring the income of Jadewell was set up, whereby a monitoring team, composed of the City Treasurer, City Auditor, City Accountant and Commission on Audit (COA) representative, conducts periodic audit of Jadewell to ensure correct computations and remittances of the cities' share. Thus, it would be difficult for Jadewell to commit fraud in the reporting of its income to the City governments of Baguio and Caloocan. From the time Jadewell remitted the respective shares of the local government units of Baguio and Caloocan, not a single disallowance by the COA was ever reported and not a single complaint was ever lodged by the cities. In other words, the reported income of Jadewell was correct and accurate.

Also, accused states that Jadewell's auditor disproves the allegations made by the BIR that its ITR for 2003 was inaccurate. Accused alleges that prosecution also failed to present concrete and reliable evidence showing that the ITRs for 2003 and 2004 contained inaccurate information, while the defense was able to present sufficient evidence that the subject ITRs were correct and accurate.

In its Annual Income Tax Returns[16] for taxable years 2003 and 2004, Jadewell declared as follows:

[16] Exhibits "1", "5", and "27", docket, pp. 1141, 1147, and 1187.

Year	2003	2004
Sales/Revenues/Receipts/Fees	P 38,140,921.20	P 15,083,952.86
Less: Cost of Sales/Services	33,870,841.20	13,424,718.05
Gross Income from Operation	P 4,270,080.00	P 1,659,234.81
Add: Non-Operating & Other Income	-	-
Total Gross Income	P 4,270,080.00	P 1,659,234.81
Less: Deductions	4,003,200.63	1,854,203.45
Taxable Income	P 266,879.37	P (194,968.64)

A scrutiny of the Statement of Income and Expenses[17] for Baguio, stamped received by the Office of the City Treasurer of Baguio, supported by the Order of Payments[18] and Official Receipts[19], shows that for taxable years 2003 and 2004, Jadewell generated revenues in the amounts of P17,064,684.11 and P14,827,134.66, respectively, compared with the respective amounts of P90,463,263.80 and P76,874,792.49, as found by the BIR. Details are as follows:

2003	Income	Direct Costs	Gross Profit	Oper. Exp.	Net Profit
January	P 1,490,829.55	P 550,807.13	P 940,022.42	P 699,628.76	P 240,393.66
February	1,423,250.91	503,354.68	919,896.23	654,295.84	265,600.39
March	1,465,930.91	552,097.48	913,833.43	560,134.73	353,698.70
April	1,886,349.99	618,413.61	1,267,936.38	748,621.95	519,314.43
May	1,608,451.81	603,707.82	1,004,743.99	645,385.91	359,358.08
June	1,167,263.64	511,772.20	655,491.44	482,619.36	172,872.08
July	1,014,656.37	531,690.97	482,965.40	477,311.73	5,653.67
August	1,082,271.83	541,592.41	540,679.42	444,931.55	95,747.87
September	1,096,187.28	564,329.77	531,857.51	493,938.54	37,918.97
October	1,460,763.64	532,867.58	927,896.06	544,032.31	383,863.75
November	1,582,054.54	650,786.93	931,267.61	572,543.72	358,723.89
December	1,786,673.64	775,444.86	1,011,228.78	711,965.82	299,262.96
Total - 2003 Baguio	**P 17,064,684.11**	**P 6,936,865.44**	**P 10,127,818.67**	**P 7,035,410.22**	**P 3,092,408.45**

2004	Income	Direct Costs	Gross Profit	Oper. Exp.	Net Profit
January	P 1,572,309.09	P 553,037.85	P 1,019,271.24	P 659,660.01	P 359,611.23
February	1,596,513.72	711,435.78	885,077.94	834,983.97	50,093.97
March	1,522,822.73	581,778.46	941,044.27	598,222.85	342,821.42
April	1,960,300.00	597,380.07	1,362,919.93	834,868.07	528,051.86
May	1,517,659.09	642,195.01	875,464.08	565,529.90	309,934.18
June	1,048,049.32	497,766.11	550,283.21	411,102.68	139,180.53
July	800,422.73	464,132.45	336,290.28	345,406.26	(9,115.98)
August	770,358.18	437,440.77	332,917.41	312,820.09	20,097.32
September	853,291.59	456,234.57	397,057.02	331,615.76	65,441.26

[17] Exhibits "85-B" to "85-M" and "85-TT" to "85-EEE", docket, pp. 1021-1032 and 1065-1076.
[18] Exhibits "85-N" to "85-CC" and "85-FFF" to "85-QQQ"; docket, pp. 1033-1048 and 1077-1088.
[19] Exhibits "85-DD" to "85-SS", "85-RRR" to "85-CCCC"; docket, pp. 1049-1064 and 1089-1100.

October	1,123,004.55	536,845.56	586,158.99	477,903.16	108,255.83
November	994,708.19	481,592.18	513,116.01	388,669.76	124,446.25
December	1,067,695.47	708,348.24	359,347.23	532,842.04	(173,494.81)
Total –2004 Baguio	**P 14,827,134.66**	**P 6,668,187.05**	**P 8,158,947.61**	**P 6,293,624.55**	**P 1,865,323.06**

With regard to the Caloocan operation, the accused failed to provide the related monthly Statement of Income and Expenses or other documents by which the Court can ascertain that the revenues as computed by the BIR were correct.

Using the limited evidence presented by the accused, particularly the Statement of Income and Expenses[20] for Baguio, the Court finds that the Annual Income Tax Returns of Jadewell for the years 2003 and 2004 do not reflect its true income for the said years.

To illustrate, if we are to deduct the revenues generated by Jadewell from its Baguio operations from its declared total revenues for the years 2003 and 2004, the balances would pertain to Jadewell's declared revenues from its Caloocan operations. These balances when compared to the total collections per Certification of Total Remittances[21] from the Office of the City Treasurer-Caloocan would show the following estimated minimum amount of undeclared revenues:

	2003	**2004**
Declared Sales/Revenues per Income Tax Return	P 38,140,921.20	P 15,083,952.86
Less: Baguio - per Statement of Income and Expenses	(17,064,684.11)	(14,827,134.66)
Declared Sales/Revenue after Baguio's Income	P 21,076,237.09	P 256,818.20
Less: Caloocan - Total Collection per City Treasurer	(21,076,350.31)	(11,789,860.66)
Estimated Minimum Amount of Undeclared Revenues	**P (113.22)**	**P (11,533,042.46)**

It is worth emphasizing that Jadewell's actual underdeclaration of revenues for its Caloocan operations would even be higher than the above computed amounts because the total collections reflected in the Certification of Total Remittances from

[20] Exhibits "85-B" to "85-M" and "85-TT" to "85-EEE", docket, pp. 1021-1032 and 1065-1076.
[21] Exhibit "U".

the Office of the City Treasurer-Caloocan represent Jadewell's gross profit from sales/revenues, *i.e.* after deduction of the related direct costs/expenses.

Clearly, there are under-declarations in Jadewell's Income Tax Returns.

The failure to supply correct information was willful and accused was responsible

Anent the element of willfulness, the prosecution contends that Jadewell was under audit/investigation by the BIR for taxable years 2003 and 2004 and despite receipt of the Letter of Authority, notices and *subpoena duces tecum* from the BIR, accused failed to present and submit the required books of accounts and other pertinent accounting records for investigation. Thus, the prosecution claims that the foregoing acts of accused clearly demonstrate willful failure to supply the correct and accurate information required in the income tax returns of Jadewell for taxable years 2003 and 2004.

The prosecution also contends that the accused continuously showed his "willfulness" when he failed to supply Jadewell's books of accounts and accounting records notwithstanding the receipt of the *subpoena* from the Department of Justice after the instant cases were filed, the receipt of the request for tax reinvestigation and consequent knowledge of the issuance of the Letter of Authority and notices, the manifestation to open the books of accounts of Jadewell and the instruction to Jadewell's accountant and auditor to confer with the responsible officers of the BIR.

Accused opposes the prosecution's allegation of "willful intention of violating any tax law". He claims that the prosecution presented the Letter of Authority and the notices allegedly received by him, however, the accused denies receiving these documents. Rather, what was established was that a certain Via Aguas received these documents. Accused points out that Via Aguas is not related to Jadewell alleging that she was connected with Yale Hardware, a company which shares the same office space in the same building with Jadewell.

Accused concludes that since he had no actual knowledge of the alleged tax deficiency as he did not receive the notices required by law to be served upon him, he cannot be said to have willfully evaded payment of the required taxes, much less willfully filed fraudulent returns for 2003 and 2004.

On the other hand, the prosecution insists that accused cannot deny liability by claiming that the BIR failed to serve him the Letter of Authority, notices and subpoena because records show that these documents were received by Via Aguas, who is Jadewell's bookkeeper and who is the same person who allegedly signed Jadewell's Income Tax Return for taxable year 2003 and Monthly Value-added Tax Declarations for Taxable Year 2003.[22]

Here, the prosecution argues that the "willful" failure of the accused to supply the accurate information in Jadewell's ITR can be proved by the failure of the accused and/or Jadewell to present the requested records and books of accounts of Jadewell. This is beside the point.

The Supreme Court has ruled in previous occasions that an assessment for deficiency tax is not necessary to a criminal prosecution.[23] The Supreme Court concisely explained, as follows:

> "An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. <u>The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an</u>

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[22] Exhibit "AA" for CTA Crim Case No. O-065.

[23] *Ungab vs. Cusi*, G.R. No. L-41919-24, May 30, 1980. See also *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999; and *Adamson vs. Court of Appeals*, G.R. No. 120935, May 29, 2009.

> inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.[24]

Indeed, it should be noted that the charges against accused relate to information contained in Jadewell's Income Tax Return, and not in relation to any assessment against Jadewell. Prosecution does not provide any other evidence or documents to prove the willfulness of the failure to supply correct and accurate information except this alleged failure to present its requested records and books of accounts to the BIR.

Accused denies his responsibility or liability with respect to the failure to supply correct and accurate information. He claims that he is a responsible officer of Jadewell but the prosecution failed to present proof that he was criminally responsible. He asserts that he is not directly involved in the finances of the corporation, he has no hand in the preparation of the ITRs for 2003 and 2004, and the ITRs for 2003 and 2004 do not bear his name and signature. He also avers that neither was there any circumstantial evidence to show that he had any hand in the preparation of these returns.

The prosecution contradicts accused's defense and claims that accused never denied that he is the President and General Manager of Jadewell and pursuant to Section 256 of the NIRC of 1997, as amended, he is one of the responsible officers who may be criminally charged.

The prosecution asseverates that it is not required that the accused actually prepared or filed the Income Tax Returns or that he is responsible for the violation for this is required only when the person liable to the violation is a mere employee of the corporation. Furthermore, the prosecution contends that although the Income Tax

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[24] *Ungab vs. Cusi, supra.*

Returns for taxable years 2003 and 2004 bore no signature of the accused, it does not alter the fact that accused is liable under Section 255 in relation to 253(d) of the NIRC of 1997. The tax returns, though unsigned, were validly filed and, therefore, accused cannot escape its legal consequences. Moreover, the tax returns, being public documents, are *prima facie* correct with respect to the entries therein.

The Court agrees with the prosecution.

A scrutiny of the "Annual Income Tax Return" for taxable year 2003[25] shows that it was unsigned; the captions *"President/Vice-President/Authorized Representative/Tax Agent"* and *"Treasurer/Asst. Treasurer/Authorized Representative"* were left blank.

For taxable year 2004, the prosecution proffered Jadewell's "Annual Income Tax Return"[26], a perusal of which indicates that the name of "Via Aguas" was typewritten over the caption "President/Vice President/Authorized Representative", but was not signed.

Section 253 of the NIRC imputes the criminal liability upon the "partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees **responsible** for the violation." The qualifying word "responsible" is understood as referring to all the officers enumerated therein. This conclusion is confirmed in Section 256 of the same Code when it provides that "(a)ny corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the **responsible** corporate officers, partners, or employees."

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[25] Exhibit "B" for CTA Crim. Case No. O-065.
[26] Exhibit "EE" for CTA Crim. Case No. O-064.

Accused is being charged with willful failure to supply the correct information in Jadewell's return. It becomes imperative therefore for the prosecution to convincingly show a direct link or connection of the filing and/or preparation of the alleged fallacious return to the accused; that is, that he participated in or was responsible for the preparation and filing thereof, or at least ordered the commission thereof.

The term "willful" in tax crimes statutes means a "voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[27] Also, an act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done.[28]

In the instant case, accused does not deny that he is the President of Jadewell. As such, he testified that he is charged with the management of the company and also responsible in setting policies and directions of the company. Having said so, it is difficult to believe that he has no hand on the financial operation of the company or at least an overview thereof. The fact that Jadewell's ITRs for taxable years 2003 and 2004 were unsigned was clearly within the knowledge of the accused being the president and general manager of Jadewell. This Court finds it highly irregular that the name of Via Aguas would be typewritten on Jadewell's ITR for taxable year 2004 despite not being an employee of the said company as claimed by the defense. Even

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[27] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116,85-1 USTC 9178 (CA7 1985), in which the Court, Citing U.S. v. Moore, 627 F2d 830 (CA7 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

[28] Black's Law Dictionary, 6th Ed., p. 1599.

more glaring, said Via Aguas, identified as bookkeeper, was able to sign several payment forms[29] for Jadewell.

This Court finds sufficient basis to declare that there has been "willful blindness" on the part of the accused. "Willful Blindness" is defined in Black's Law Dictionary as "deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable."[30]

The accused, as president, should at the very least have been aware of who is authorized to sign Jadewell's income tax returns and other tax filings. Accused, as president and general manager of Jadewell, could not even explain how a certain Via Aguas was able to sign some tax returns and payment forms, despite the allegation of the defense that said Via Aguas is not an employee of Jadewell. Accused also submitted, into evidence, income tax returns which were unsigned. Knowing all these, accused did not even inquire as to whether Jadewell's income tax returns were being properly filed and whether the information contained therein is true and accurate. This "deliberate avoidance" or "omission" on the part of the accused leads this court to conclude that the supply of false and incorrect information was willful and done with the knowledge of the accused.

Thus, after careful consideration of the testimonial and documentary evidence presented by both parties, this Court finds that the prosecution was able to establish the guilt of the accused beyond reasonable doubt of the crimes charged.

As to the civil aspects of the case, which was deemed instituted with the criminal prosecution, there having been no assessment made by the BIR against the

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[29] Exhibits "73-A", "74", "75", and "76".
[30] Black's Law Dictionary, Eighth Edition, p. 1630.

accused, the computation of the unreported income cannot be used by this Court as basis for the determination of the civil liabilities. While an assessment of the tax before there can be a criminal prosecution is not necessary, a civil action for collection of the tax requires that the assessment procedures be complied with. As such, no proper determination of the civil liabilities can be made by the Court.

With respect to the penalties, accused was charged with failure to supply correct and accurate information in its ITRs for taxable years 2004 and 2003, thus, the imposition of a fine of P50,000.00 for each case is proper. Furthermore, the imposition of the indeterminate penalty of imprisonment of one (1) year, as minimum, to two (2) years, as maximum, for each crime charged was also found to be proper under the circumstances. This, however, is without prejudice to Section 280 of the NIRC of 1997, which provides for the imposition of subsidiary penalty in the event that the accused has no property with which to meet the fine imposed upon him by the Court or is unable to pay such fine.

In addition, pursuant to Section 256 of the NIRC of 1997 which imposes an additional fine on the corporation separate on those penalties imposed on the responsible officers, Jadewell is further penalized by a fine of P100,000.00 for each violation.

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. O-064, finding the accused Rogelio A. Tan GUILTY beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED TO PAY a fine in the amount of P50,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.

Jadewell Parking Systems Corporation is further ORDERED TO PAY a fine of P100,000.00, pursuant to Section 256 of the NIRC of 1997, as amended; and

2. In Criminal Case No. O-065, finding the accused Rogelio A. Tan GUILTY beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED TO PAY a fine in the amount of P50,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.

   Jadewell Parking Systems Corporation is further ORDERED TO PAY a fine of P100,000.00, pursuant to Section 256 of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice