Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-656** For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended
-versus-	
ANALIZA SAN MIGUEL DAVID, Accused.	

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PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-657** For: Violation of Section 254 of the National Internal Revenue Code of 1997, as amended
-versus-	
ANALIZA SAN MIGUEL DAVID, Accused.	

x-------------------------x

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-658** For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* and MINDARO-GRULLA, *JJ.*
ANALIZA SAN MIGUEL DAVID, Accused.	Promulgated: MAY 29 2019 9:17 am

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on March 27, 2019 are the three (3) above-entitled consolidated cases.

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Accused Analiza San Miguel David is charged before this Court with the crimes of Violation of Sections 254 and 255 of the National Internal Revenue Code of 1997, as amended, under the following Informations, which read as follows:

> **Criminal Case No. O-656** *(Violation of Section 255 of the NIRC of 1997, as amended) -*
>
> *"That sometime in April 2012 or until the scheduled deadline for the filing of the annual Income Tax Return (ITR) in Magalang Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused Analiza San Miguel David, did, then and there, willfully and unlawfully fail to file her income tax return on the income she earned for taxable year 2011 and to pay the corresponding income tax for said year in the amount of TWENTY NINE MILLION EIGHT HUNDRED FORTY ONE THOUSAND NINE HUNDRED SIXTY SIX PESOS (P29,841,966.00), exclusive of surcharges and interest, to the damage and prejudice of the government.'*
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> ***CONTRARY TO LAW."***[1]
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> **Criminal Case No. O-657** *(Violation of Section 254 of the NIRC of 1997, as amended) -*
>
> *"That sometime in April 2011 or until the scheduled deadline for the filing of the annual Income Tax Return (ITR), in Magalang, Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused Analiza San Miguel David, did, then and there, willfully and unlawfully attempt to evade or defeat tax by not declaring all the income she earned in her tax return for taxable year 2010, which resulted in her income tax deficiency in the amount of TWO MILLION ONE HUNDRED EIGHTY TWO THOUSAND THREE HUNDRED SEVENTY THREE PESOS (P2,182,373.00), exclusive of surcharges and interest, to the damage and prejudice of the government.'*
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> ***CONTRARY TO LAW."***[2]

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[1] CTA Crim. Case No. O-656, Docket, pp. 6-7.
[2] CTA Crim. Case No. O-657, Docket, pp. 6-7.

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Criminal Case No. O-658 *(Violation of Section 255 of the NIRC of 1997, as amended) -*

> *"That sometime in April 2013 or until the scheduled deadline for the filing of the Annual Income Tax Return (ITR), in Magalang, Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused Analiza San Miguel David, a registered taxpayer required to file return and pay income tax did, then and there willfully and unlawfully fail to file her income tax return on the income she earned for taxable year 2012 and to pay the corresponding income tax for said year in the amount of FOUR MILLION EIGHTY THREE THOUSAND THREE HUNDRED EIGHTY THREE 60/100 PESOS (P4,083,383.60), exclusive of surcharges and interest, to the damage and prejudice of the government.'*
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> ***CONTRARY TO LAW."***[3]

Accused Analiza San Miguel David voluntarily appeared before the Regional Trial Court ("RTC") Office of the Executive Judge, Angeles City and submitted herself to the jurisdiction of the Court by posting a cash bond for her provisional liberty.[4]

The three (3) cases were ordered consolidated in the Resolution dated April 3, 2018.[5]

Upon arraignment[6], the accused Analiza San Miguel David, whose identity was confirmed to be the same person charged in the informations and assisted by defense counsel, Atty. Kristine Keith N. Colle, entered a plea of "Not Guilty" to all charges.

The Preliminary Conference[7] and Pre-trial[8] were held on May 28, 2018 and June 21, 2018, respectively.

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[3] CTA Crim. Case No. O-658, Docket, pp. 6-7.
[4] CTA Crim. Case No. O-656, Docket, pp. 78-97; CTA Crim. Case No. O-657, Docket, pp. 70-92.
[5] CTA Crim. Case No. O-656, Docket, pp. 110-112.
[6] Ibid. pp. 120-123.
[7] Ibid. pp. 124-133.
[8] Ibid. p. 145.

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After the termination of the pre-trial, the case was set for the presentation of the parties' respective evidence.

Trial proceeded during which the prosecution presented four (4) witnesses, namely:

1. Ms. Lalaine S. Flores,
2. Ms. Melba B. Tayag,
3. Mr. Raul Q. Magtagnob, and
4. Mr. Fortunato B. Tagle.

Ms. Lalaine S. Flores, an Administrative Assistant V assigned at the Collection Section of RDO 21A- North Pampanga, testified that Group Supervisor Raul Q. Magtagnob requested for the details about the filing and payment of annual income tax of Analiza San Miguel David for taxable years 2011 and 2012. Ms. Lalaine S. Flores testified that Arlene A. Tayag, Administrative Assistant III Collection Section of RDO 21A- North Pampanga prepared and signed a Certification that Analiza San Miguel David with TIN: 260-569-997 has not filed her Annual Income Tax Return for taxable years 2011 and 2012; that it was verified through the Integrated Tax System that Analiza San Miguel David did not pay her Annual Income Tax Return for taxable years 2011 and 2012; and that Ms. Lalaine S. Flores signed the Certification which was forwarded to former RDO Corazon R. Balinas.

Ms. Melba B. Tayag, Revenue Officer I at Client Support Section of RDO 21A- North Pampanga, testified that Group Supervisor Raul Q. Magtagnob requested for the registration details of Analiza San Miguel David; that after checking the records she prepared and signed the Certification dated May 13, 2016 containing the details about the registration details of Analiza San Miguel David; that said Certification was noted and signed by Elaine D. Cruz, Chief of Client Support Section of RDO 21; and that the said Certification was likewise signed by RDO Renato J. Mina.

Mr. Raul Q. Magtagnob, Chief Revenue Officer II at the National Investigation Division, testified that a Letter of Authority was issued against Analiza San Miguel David, a registered taxpayer and proprietor of 136 Dolores Filling Station, and he was one of those authorized to examine the tax compliance of Analiza San Miguel David for the period January 1, 2010 to December 31, 2012; that he was able to secure a copy of Analiza David's 2010 Financial Statements; that Certification from PTT was secured covering the PTT's sales for 2010 to 2012 to 136 Dolores Filling Station and 364 Refilling Station; that after several notices and a subpoena duces tecum issued against Analiza David, she failed to appear and submit her book of accounts; that a joint-complaint affidavit was filed against Analiza David with approval of former Commissioner of Internal Revenue Kim Henares; that the filing of the criminal complaint was based on the underdeclaration of sales for 2010 in the amount of Php6,858,254.00 and a certification of for non-filing of annual income tax return for 2011 and 2012.

Mr. Fortunato B. Tagle, Special Investigator II at the National Investigation Division, testified that a Letter of Authority was issued against Analiza San Miguel David and he was one of those authorized to examine the tax compliance of Analiza San Miguel David for the period January 1, 2010 to December 31, 2012; that after several notices and a subpoena duces tecum issued against Analiza David, she failed to appear and submit her book of accounts; that a joint-complaint affidavit was filed against Analiza David with approval of former Commissioner of Internal Revenue Kim Henares; that they were able to secure a Certification from PTT Philippines Corp. of the amount of fuel which were delivered for sale to 136 Dolores Fuel Filling Station from which the underdeclaration of sales in the amount of Php6,858,254.00 for 2010 was made and a certification for non-filing of annual income tax return for 2011 and 2012.

The prosecution, after the formal offer of its documentary exhibits and their admissions, formally rested its case. The documentary exhibits are as follows:

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Exhibits	Description
P-1	Letter-referral addressed to Secretary of Justice from former BIR Commissioner Kim S. Jacinto-Henares consisting of two (2) pages.
P-2	Joint Complaint-Affidavit executed on June 02, 2016 by Revenue Officers Fortunato B. Tagle, Vicente J. Velario, Marcial M. Padilla and Raul Q. Magtagnob consisting of six (6) pages.
P-3	Audited Financial Statements filed by Analiza S. David as proprietor of 136 Dolores Fuel Filling Station filed with the BIR for taxable year 2010 consisting of seven (7) pages.
P-4	Certification issued by Revenue District Office No. 21A-North Pampanga on May 13, 2016.
P-5	Letter of Authority SN:eLA201100060752; LOA-211-2013-00000194 dated October 09, 2013 with its attached List of Requirements.
P-5-a	List of Requirements dated October 18, 2013.
P-6	Second Notice
P-7	Final Notice
P-8	Subpoena Duces Tecum SDT No. RR4-D-2014-090 issued on September 23, 2014.
P-9	Certification issued by Revenue District Office No. 21A-North Pampanga on May 30, 2016.
P-10	Certification from PTT Philippines Corporation dated September 16, 2014.
P-11	Judicial Affidavit of Lalaine S. Flores.

In defense, accused through counsel, presented three (3) witnesses, namely:

1. Mr. Larry Aquino,
2. Analiza San Miguel David, and
3. Diosdado P. San Miguel.

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Mr. Larry Aquino, Barangay Captain in Barangay Dolores, Magalang, Pampanga from October 2007 to June 2013, testified and identified the Certification issued by the Office of the Punong Barangay on February 19, 2013 stating that 136 Fuel Filling Station operated by Analiza S. David is not existing since December 31, 2011; that a new owner in the name of Diosdado P. San Miguel applied for a barangay permit of 364 Refilling Station.

Accused Analiza San Miguel David testified that she came to know that she did not file her annual Income Tax Return (ITR) for 2011 and 2012 only when she got hold of the documents pertaining to the case; that she thought that her external bookkeeper had filed the ITR considering that she is paying her taxes monthly as evidenced by the Quarterly VAT Returns, Monthly VAT Returns and official receipts from the BIR; that she stopped her business 136 Fuel Filling Station in the end of 2011; that her brother Diosdado San Miguel took over under the business name of 364 Refilling Station in 2018; and that there were deliveries for the first three months of 2018 under 136 Fuel Filling Station although said deliveries are on account of 364 Refilling Station; and that she paid the correct taxes for 2010 as evidenced by the Monthly VAT Declarations, Quarterly VAT Declarations, Revenue Official Receipts; Quarterly Income Tax Returns and Annual Income Tax Returns for 2010.

The defense, after the formal offer of its documentary exhibits and their admissions, formally rested its case. The documentary exhibits are as follows:

Exhibits	Description
A-1	Certificate of Registration Three Six Four Fuel Refilling Station.
A-2	Certification from the Office of the Punong Barangay of Dolores Magalang Pampanga dated 19 February 2013
A-3	Affidavit of Closure dated 11 March 2013.
A-4	Monthly Value Added Tax Declaration for Jan

	2010 bearing an amount of P1,988.57.
A-5	Revenue Official Receipt No. 03134130.
A-6	Monthly Value Added Tax Declaration for Feb 2010 with total amount payable of P2,067.89.
A-7	Revenue Official Receipt No. 03137112.
A-8	Quarterly Value Added Tax Return for Period 01-31-10 to 03-31-10 with total amount payable of P1,846.35.
A-9	Revenue Official Receipt No. 03562185.
A-10	Monthly Value Added Tax Declaration for April 2010 with total amount payable of P2,571.75.
A-11	Revenue Official Receipt No. 03955896.
A-12	Monthly Value Added Tax Declaration for May 2010 with total amount payable of P1,854.56.
A-13	Revenue Official Receipt No. 04295438.
A-14	Quarterly Value Added Tax Return for Period 04-30-10 to 06-30-10 with total amount payable of P2,632.15.
A-15	Revenue Official Receipt No. 04672641.
A-16	Monthly Value Added Tax Declaration for July 2010 with total amount payable of P3,005.25.
A-17	Revenue Official Receipt No. 04871820.
A-18	Monthly Value Added Tax Declaration for August 2010 with total amount payable of P2,451.32.
A-19	Revenue Official Receipt No. 00549557.
A-20	Quarterly Value Added Tax Return for Period 07-31-10 to 09-30-10 with total amount payable of P4,561.45.
A-21	Revenue Official Receipt No. 00726940.
A-22	Monthly Value Added Tax Declaration for October 2010 with total amount payable of P5,766.23.
A-23	Revenue Official Receipt No. 01350787.

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A-24	Monthly Value Added Tax Declaration for November 2010 with total amount payable of P6,328.95.
A-25	Revenue Official Receipt No. 01524464.
A-26	Quarterly Value Added Tax Return for Period 10-31-10 to 12-31-10 with total amount payable of P6,343.66.
A-27	Revenue Official Receipt No. 02065046.
A-28	Quarterly Income Tax Return for First Quarter of 2010 with total amount payable of P854.00.
A-29	Revenue Official Receipt No. 03565852.
A-30	Quarterly Income Tax Return for Second Quarter of 2010 with total amount payable of P2,237.00.
A-31	Revenue Official Receipt No. 04872440.
A-32	Quarterly Income Tax Return for Third Quarter of 2010 with total amount payable of P4,798.00.
A-33	Revenue Official Receipt No. 01346524.
A-34	Annual Income Tax Return for year 2010 with total amount payable of P16,154.00.
A-35	Revenue Official Receipt No. 02549967.
A-36	Monthly Value Added Tax Declaration for January 2011 with total amount payable of P5,982.41.
A-37	Revenue Official Receipt No. 02439093.
A-38	Monthly Value Added Tax Declaration for February 2011 with total amount payable of P4,166.75.
A-39	Revenue Official Receipt No. 02442395.
A-40	Quarterly Value Added Tax Return for Period January 31, 2011 to March 31, 2011 with total amount payable of P1,286.40.
A-41	Revenue Official Receipt No. 03362489.
A-42	Monthly Value Added Tax Declaration for April

	2011 with total amount payable of P3,355.67.
A-43	Revenue Official Receipt No. 03686260.
A-44	Monthly Value Added Tax Declaration for May 2011 with total amount payable of P5,354.76.
A-45	Revenue Official Receipt No. 03687711.
A-46	Quarterly Value Added Tax Return for Period April 30, 2011 to June 30, 2011 with total amount payable of P4,988.45.
A-47	Revenue Official Receipt No. 04626920.
A-48	Monthly Value Added Tax Declaration for July 2011 with total amount payable of P4,166.78.
A-49	Revenue Official Receipt No. 04629798.
A-50	Monthly Value Added Tax Declaration for August 2011 with total amount payable of P3,896.55.
A-51	Revenue Official Receipt No. 04876405.
A-52	Quarterly Value Added Tax Return for Period July 31, 2011 to September 30, 2011 with total amount payable of P5,184.75.
A-53	Revenue Official Receipt No. 05357283.
A-54	Monthly Value Added Tax Declaration for October 2011 with total amount payable of P6,398.54.
A-55	Revenue Official Receipt No. 00312129.
A-56	Monthly Value Added Tax Declaration for November 2011 with total amount payable of P4,910.75.
A-57	Revenue Official Receipt No. 00312978.
A-58	Quarterly Value Added Tax Return for Period October January 31, 2011 to December 31, 2011 with total amount payable of P5,112.30.
A-59	Revenue Official Receipt No. 00807204.
A-60	Quarterly Income Tax Return for First Quarter of 2011 with total amount payable of P965.00.

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A-61	Revenue Official Receipt No. 02549980.
A-62	Quarterly Income Tax Return for Second Quarter of 2011 with total amount payable of P3,431.62.
A-63	Revenue Official Receipt No. 04629219.
A-64	Quarterly Income Tax Return for Third Quarter of 2011 with total amount payable of P6, 402.07.
A-65	Revenue Official Receipt No. 05357644.
A-66	Monthly Value Added Tax Declaration for January 2012 with total amount payable of P1,866.75.
A-67	Revenue Official Receipt No. 01872323.
A-68	Monthly Value Added Tax Declaration for February 2012 with total amount payable of P3,598.54.
A-69	Revenue Official Receipt No. 01874449.
A-70	Quarterly Value Added Tax Return for Period January 31, 2012 to March 31, 2012 with total amount payable of P5,465.29.
A-73	Monthly Value Added Tax Declaration of Diosdado San Miguel for April 2012 bearing the amount of P15,837.43.
A-75	Monthly Value Added Tax Declaration of Diosdado San Miguel for May 2012 bearing the amount of P14,064.93.
A-76	Monthly Value Added Tax Declaration of Diosdado San Miguel for July 2012 bearing the amount of P6,291.77.
A-78	Monthly Value Added Tax Declaration of Diosdado San Miguel for August 2012 bearing the amount of P6,256.25.
A-79	Quarterly Value Added Tax Return of Diosdado P. San Miguel for the Third Quarter of 2012 bearing the amount of P19,109.95.
A-81	Monthly Value Added Tax Declaration of Diosdado San Miguel for October 2012 bearing the amount of P12,823.77.

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A-82	Monthly Value Added Tax Declaration of Diosdado San Miguel for November 2012 bearing the amount of P15,146.55.
A-83	Quarterly Value Added Tax Return of Diosdado P. San Miguel for the Fourth Quarter of 2012 bearing the amount of P19,782.50.
A-84	Quarterly Income Tax Return of Diosdado P. San Miguel for First Quarter of 2012 bearing an amount of P2,081.00.
A-85	Quarterly Income Tax Return of Diosdado P. San Miguel for Second Quarter of 2012 bearing an amount of P2,251.00.
A-86	Quarterly Income Tax Return of Diosdado P. San Miguel for Third Quarter of 2012 bearing an amount of P5,687.00.
A-87	Annual Income Tax Return of Diosdado P. San Miguel for First Quarter of 2012.
A-88	Revenue Official Receipt No. 01397797.
A-89	Certification dated June 29, 2018.
A-90	DTI Certificate of Registration of Three Six Four Fuel Refilling Station under the name of Diosdado Pangilinan San Miguel
A-92	Mayor's Permit dated January 26, 2018 issued to Three Six Fuel Refilling Station.
A-93	Judicial Affidavit of Analiza San Miguel David.
A-95	Judicial Affidavit of Diosdado San Miguel.

Thereafter, both prosecution and defense were ordered[9] to file their simultaneous memoranda within thirty (30) days from notice. In compliance, the accused filed her Memorandum on March 7, 2019. Thus, as per Resolution dated March 27, 2019,[10] considering the report by the Records Division that no memorandum has been filed for the prosecution, the case was deemed submitted for decision.

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[9] CTA Case No. O-656 Docket, Vol. II, pp.585-586.
[10] Ibid. p. 616.

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This Court is confronted with these issues:

> *"1. Whether or not the accused attempted to evade or defeat payment of income tax by not declaring all her income for taxable year 2010,*
>
> *2. Whether or not the accused intentionally failed to file her annual income tax return and pay the corresponding taxes due for taxable years 2011 and 2012,*
>
> *3. Whether or not accused is innocent of the charges filed against her, and*
>
> *4. Whether or not accused has willful intention to defraud the government."*[11]

In sum, the main issue is whether accused is guilty beyond reasonable doubt of the crimes as charged.

Accused, in her memorandum argues that the prosecution failed to prove that there was willfulness or deliberate intent on the part of the accused to evade or defeat the payment of income taxes. Accused argues that if there was deliberate intent to evade taxes, she would have likewise omitted to file the monthly returns and quarterly VAT returns for taxable year 2010; that the prosecution failed to prove that the accused under-declared her income; and that the accused did not intentionally fail to file her annual income tax return for 2011 and 2012 on the ground that the certification from PTT is not authenticated and 136 Dolores Filling Station closed operation on December 31, 2011;

We resolve.

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[11] CTA Case No. O-656 Docket, Vol. II, pp.585-586.

Criminal Case No. O-657
For: Violation of Section 254 of the National Internal Revenue Code of 1997, as amended

Accused Analiza San Miguel David was charged with attempt to evade or defeat the payment of income tax for taxable year 2010, under Section 254 of the NIRC of 1997, as amended, docketed as Crim. Case No. O-657.

Section 254 of the NIRC of 1997, as amended, provides:

> *"Sec. 254. Attempt to Evade or Defeat Tax. -Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand ([Php]30,000) but not more than One hundred thousand pesos ([Php]100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."*

To sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended, the following elements must be established:

1) An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and
2) Such attempt to evade or defeat tax or the payment thereof is willful.

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr.*,[12] the Supreme Court held that tax evasion connotes the integration of three (3) factors:

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[12] G.R. No. 147188, September 14, 2004.

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1. The end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;

2. An accompanying state of mind which is described as being "evil", in "bad faith", "willful", or "deliberate and not accidental"; and

3. A course of action or failure of action which is unlawful.

It is necessary for plaintiff to prove beyond reasonable doubt that (1) there was non-declaration and non-payment of income tax legally due from the accused and (2) there was "willfulness" or deliberate intent on the part of accused to evade or defeat the payment of income taxes. The second element under Section 254 of the NIRC of 1997, as amended, is dependent on the first element, that is, the taxpayer did not pay the tax due. In other words, there can be no willful failure to evade tax, if there is in fact no requirement to pay the same. Thus, to prove the elements of the offense under Section 254 of the NIRC of 1997, as amended, the prosecution is burdened to establish the following:

1. Offender is required to pay the tax imposed under the NIRC;

2. Offender attempts in any manner to evade or defeat any tax imposed, or the payment thereof; and

3. The attempt to evade or defeat any tax imposed, or the payment thereof was willful;

In this case, it is essential for plaintiff to prove -

(1) that accused is a registered taxpayer in the Philippines;

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(2) that for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due; and

(3) that the non-payment or payment of less than that is ought to be due was willful.

As to the first element, plaintiff was able to establish that accused Analiza San Miguel David is a registered taxpayer of Revenue District Office No. 21A- North Pampanga with Tax Identification No. 260-569-997-000 and that she is the proprietor of 136 Dolores Fuel Filling Station.[13]

As to the second element, plaintiff failed to establish that for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due.

It is an established fact that for taxable year 2010, accused Analiza San Miguel David filed her Income Tax Return and paid the tax due therein, thus, the question is whether the amount of income tax paid by accused is less than what is due. Plaintiff's sole documentary evidence to prove the attempt to evade or defeat the payment of income tax for taxable year 2010 is Exhibit "P-10", a Certification from PTT Philippines Corporation (PTT) dated September 16, 2014, which states the sales of PTT to 136 Dolores Fuel Filling Station for 2010. Plaintiff contends that there was underdeclaration of purchases which resulted to the underdeclaration of sales, underdeclaration of income and finally underdeclaration of tax due.

However, a finding of underdeclaration of purchases does not in itself result in the imposition of income tax and VAT.[14] Indeed, there are three (3) elements for the imposition of income tax. First, there must be gain or profit. Second, the gain or profit is realized or received, actually or constructively. And third, it is not exempted by law or treaty from income tax.

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[13] Exhibit "P-4".

[14] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

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Income tax is based on income received from any property, activity or service.[15] Income must be proven, and such income should have been earned, received or realized by the taxpayer. A conclusion that an underdeclaration of purchases will automatically result to underdeclaration of tax is presumptive in nature and required further collaborating evidence to prove the underdeclaration of sales. Here, plaintiff failed to prove that such underdeclaration of purchases resulted to underdeclaration of income tax. There is no evidence or testimony submitted to show that income resulted from the unaccounted purchases and that income was actually received by 136 Dolores Fuel Filling Station for 2010.

Accordingly, mere reliance on the fact that there is underdeclared purchase is not enough basis for the Court to conclude a fact that there were underdeclared sales and underdeclared net income resulting to underdeclared income tax.

As to the third element, plaintiff likewise failed to establish that the attempt to evade or defeat any tax imposed, or the payment thereof was willful. To reiterate, underdeclaration of purchases does not automatically result to underdeclaration of tax. Plaintiff failed to present evidence to prove and connect that the underdeclaration of purchases is part of a scheme to under declare sales to reduce net income and income tax. There is not enough basis to conclude beyond reasonable doubt that there is willful failure to evade tax.

It is important to note that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[16] Likewise, there is not enough basis to conclude beyond reasonable doubt that accused willfully underdeclared the sales for 2010.

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[15] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108576, January 20, 1999.

[16] Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., G.R. No. L-19727, May 20, 1965.

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Criminal Case No. O-656 and
Criminal Case No. O-658
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Accused Analiza San Miguel David was likewise charged with failure to file her Income Tax Returns (ITRs) for taxable years 2011 and 2012 in violation of the first paragraph of Section 255 of the NIRC of 1997, as amended, docketed as Crim. Case No. O-656 and Crim. Case No. O-658.

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.-* ***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 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 Ours)*

To sustain a conviction for failure to make or file a return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. Accused is a person required by the NIRC or rules and regulations to make or file a return;

2. Accused failed to make or file the return at the time or times required by law or rules and regulations; and

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

As to the first element, is the accused required to file a return? Thus, it is necessary to determine who are those required to file an income tax return. Sections 51(A) and 74 of the NIRC of 1997, as amended, provide:

> *SEC. 51. Individual Return. –*
>
> *(A) Requirements. -*
>
> *(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:*
>
> *(a)* ***Every Filipino citizen residing in the Philippines****;*
>
> *(b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;*
>
> *(c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and*
>
> *(d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.*
>
> *(2) The following individuals shall not be required to file an income tax return:*
>
> *(a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35:* ***Provided That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income****;*
>
> *xxx xxx xxx.*
>
> *74. Declaration of Income Tax for Individuals. –*
>
> *(A) In General. -Except as otherwise provided in this Section,* ***every individual subject to income tax under Sections 24 and 25(A) of this Title****, who is*

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> *receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general,* ***'self-employment income' consists of the earnings derived by the individual from*** *the practice of profession or* ***conduct of trade or business carried on by him as a sole proprietor*** *or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner. (Emphasis supplied)*

In relation thereto, Section 32(A)(2) of the NIRC of 1997, as amended, defines what gross income is, to wit:

> *SEC. 32. Gross Income. –*
>
> *(A) General Definition. - Except when otherwise provided in this Title,* ***gross income means all income derived from whatever source,*** *including (but not limited to) the following items:*
>
> *xxx xxx xxx.*
>
> *(2)* ***Gross income derived from the conduct of trade or business*** *or the exercise of a profession; (Emphasis supplied)*

In this case, plaintiff was able to establish that the accused Analiza San Miguel David is a registered taxpayer of Revenue District Office No. 21A- North Pampanga with Tax Identification No. 260-569-997-000 and that she is the proprietor of 136 Dolores Fuel Filling Station.[17] The accused admitted in her testimony[18] that she operated 136 Dolores Fuel Filling Station since 2008. The accused

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[17] Exhibit "P-4"
[18] Exhibit "A-93"

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likewise confirmed that there were sales in 2011 and 2012 whereby monthly VAT declarations and quarterly VAT Returns were filed with official receipts from the BIR[19].

Based on these pieces of evidence, the Court is convinced that 136 Dolores Fuel Filling Station received income payments for taxable years 2011 and 2012 from conducting business. Accordingly, accused, as the sole proprietor of 136 Dolores Fuel Filling Station is required by law to file ITRs for taxable years 2011 and 2012. After establishing that the accused is required by law to file ITRs for 2011 and 2012, the prosecution now has the burden to prove that the accused failed to make or file a return at the time required by law.

As to the second element, plaintiff was able to establish through the Certification[20] that accused Analiza San Miguel David did not file her Income Tax Returns for taxable years 2011 and 2012. Moreover, the accused admitted in her testimony that she failed to file her ITRs for 2011 and 2012[21] but in her defense claimed she came to know that she was not able to file the ITRs only in 2017, when she received the records of the case. She claimed she thought that her external bookkeeper has submitted the ITR for 2011 considering that she was paying tax monthly and quarterly. Likewise, accused thought that she does not need to file her ITR for 2012 considering that 136 Dolores Fuel Filling Station stopped operation in December of 2011. Hence, the Court finds that despite having sales and filing the monthly VAT declarations and quarterly VAT Returns and paying the VAT payable therein, the accused, nevertheless, still failed to file an ITR for taxable years 2011 and 2012.

As to the third element, it requires that the failure to make or file the return was willful. The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need

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[19] Exhibits "A-36- to A-70"
[20] Exhibit "P-9"
[21] Exhibit "A-93"

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not be shown.[22] According to Black's Law Dictionary[23], 21 the term "willful" is defined as:

> *"An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law. xxx.*
>
> *A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.*
>
> *Act is 'willful' within meaning of section (sic) of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. Harrington v. U.S., C.A.R.I., 504 F.2d 1306, 1315."*

As to how willfulness is proven, the CTA in *People v. Bienvenido S. Dimson*[24], explained:

> *"xxx "willfulness" is a state of mind that may be inferred from the circumstances of the case, and proof of willfulness may be, and usually is, shown by circumstantial evidence alone, xxx. (Citations omitted and underscoring supplied)*

Consequently, a Certification[25] alone that the accused Analiza San Miguel David did not file her Income Tax Returns for taxable years 2011 and 2012 is not enough to prove that the failure to file the ITR is willful,

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[22] Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in People of the Philippines vs. Estelita Delos Angeles, CTA Crim. Case No. O-027, November 25, 2009.
[23] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.
[24] CTA Crim. Case Nos. O-071 and O-085, July 2, 2014.
[25] Exhibit "P-9"

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since the prosecution is burdened to establish by other evidence the positive act or state of mind that lead to the non-filing of ITR was willful. Knowledge of a taxpayer's obligation to file the required return and the voluntary failure to comply therewith in the manner required by law will suffice.[26]

Incidentally, while this Court frown upon the bare allegation and self-serving statements that the failure to file the ITR is because of the entrusting of the same to a bookkeeper or accountant, for the duty and obligation to file the ITR is incumbent and remains with the taxpayer, it is a well-entrenched rule in jurisprudence that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove her innocence.[27]

Applying the same to the instant case, the willful failure to file an ITR was not fully established by the prosecution. Perusal of the evidence of the prosecution as well as the cross examination of the accused by the prosecution reveals the lack of evidence and the failure to elicit testimonies to prove a positive act or state of mind of the accused that the non-filing was willful. A certification[28] that a taxpayer did not file her ITR in itself is not enough to prove that the failure to file the ITR is willful.

Moreover, records show that accused was consistent in filing the monthly VAT declarations and Quarterly VAT Returns and paying the VAT payable due therein[29]. The consistent compliance in filing and paying the VAT for 2011 negates the alleged willfulness in not filing of ITR for 2011. Moreover, as for the non-filing of ITR for 2012, accused was able to present evidence that she stopped

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[26] People of the Philippines vs. Gloria Kintanar, CTA CRIM Case Nos. O-033 & O-034, August 26, 2009.
[27] Boac, et al. vs. People of the Philippines, G.R. No. 180597, November 7, 2008, 570 SCRA 533
[28] Exhibit "P-9"
[29] Exhibits "A-4" to "A-65"

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operating the 136 Dolores Fuel Filling Station in December of 2011. There was likewise no evidence presented by the prosecution which would indicate that the accused was previously delinquent in filing her ITR for the previous years which may hint that the accused might have been aware that the non-filing of the ITR for 2011 was highly probable, and that she continuously refused the compliance with her tax obligations.

Thus, the Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused willfully failed to file her ITRs for taxable years 2011 and 2012. Consequently, lacking the element of "willfulness", the Court acquits the accused of the crime of willful failure to file ITRs for 2011 and 2012 under Section 255 of the NIRC of 1997, as amended.

As to the civil aspect of these consolidated cases, the same is deemed simultaneously instituted and jointly determined with the instant criminal cases pursuant to Section 7(b)(1) of Republic Act (RA) No. 1125[30], as amended by RA No. 9282, which provides that "the filing of a criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

In Ungab v. Cusi[31], the Supreme Court held that "there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code." Thus, while an assessment is not required in the prosecution of the criminal cases, the final determination of the Commissioner as to the tax liability is necessary in order for the Court to rule on the civil liability.[32]

However, no assessment notices were presented to prove the assessment of deficiency income tax against

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[30] An Act Creating the Court of Tax Appeals
[31] G.R. No. L-41919, May 30, 1980.
[32] People v. Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo, CTA Crim. Case No. O-219, October 7, 2013.

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accused Analiza San Miguel David, therefore, there is no basis for the Court to rule upon the civil liability of the accused.

WHEREFORE, premises considered, accused **Analiza San Miguel David** is **ACQUITTED** in **CTA Criminal Case Nos. O-656, O-657, and O-658** for failure of the prosecution to prove her guilt beyond reasonable doubt. Accordingly, for insufficiency of evidence, no civil liability is herein imposed.

SO ORDERED.

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

I CONCUR:

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

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice