REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus –

BERNARDO ANACTA y BASADA a.k.a. BERNARD ANACTA y BASADA,
Accused.

CTA CRIM. CASE NO. O-415
(NPS Docket Number: XVI-INV-12L-00558)

For: Tax Evasion (Violation of Section 255, NIRC of 1997, as amended)

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 0 6 2019
9:20 a.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Accused Bernardo Anacta y Basada a.k.a Bernard Anacta y Basada is charged before this Court for failure to supply correct and accurate information in his Income Tax Return (ITR) for taxable year 2009 under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

STATEMENT OF FACTS

On December 2, 2010, the Bureau of Internal Revenue (BIR) National Investigation Division (NID) issued NID Memo Assignment No. KJH/SCD 2010-12-02-659[1] directing Group Supervisor (GS) Renato S. Corpuz to conduct a thorough preliminary investigation on the alleged schemes of tax evasion being perpetrated by the accused to ascertain the veracity of the information.

Access Letters[2] dated September 24, 2012 were sent to various companies requesting for a certification as to the amount of income payments and taxes withheld made by them for the account of the accused for the year 2009.

In response, the following companies issued a certification on the income payments and taxes withheld made by them for the account of the accused for taxable year 2009:

Exh. No.	Company	Income Payment per Certification	Tax withheld per Certification
A-6	Avon Cosmetics, Inc.	1,261,764.87	164,588.24
P-7/A-7	BBDO Guerrero, Inc.	not indicated	56,470.59
A-8	Campaigns & Grey, Inc.	not indicated	27,511.77
A-9	Golden ABC, Inc.	768,890.26	not indicated
P-10/A-10	Golden Arches Development Corp.	295,588.21	44,338.23
P-11/A-11	McCann Worldgroup Philippines, Inc.	552,941.27	82,941.19
A-12	Harrison Communications, Inc.	973,529.53	146,029.43
P-13/A-13	Publicis JimenezBasic Inc.	531,274.24	60,774.48
P-14/A-14	SM Mart, Inc.	68,041.49	10,206.22
P-15/A-15	Southeast Asia Food, Inc. (NutriAsia)	175,257.80	26,288.67
P-16/A-16	United Laboratories, Inc.	349,411.70	52,411.69
A-17	Universal Robina Corporation	not indicated	9,264.71

Thereafter, Letter of Authority (LOA) No. LOA-211-2012-00000297/SN:eLA201100045518[3] dated November 8, 2012 addressed to Anacta Bernard Basada was issued, authorizing Revenue Officers (RO) Imelda Alcantara, Franklin Mendoza, Leticia Lorna Dosado, Daniel Llavor, Fabian Ceasar Exmundo and GS Renato S. Corpuz to examine the books of accounts and other accounting records of the accused for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2010 pursuant to the Run After Tax Evaders (RATE) program. The LOA was received by a certain Sarahfiele V. Haber on November 9, 2012.

[1] Exhibits "P-4" and "A-4", docket, vol. I, p. 287.
[2] Exhibits "P-21" and "P-24", docket, vol. I, pp. 509-512.
[3] Exhibits "P-5" and "A-5", docket, vol. I, p. 288.

Meanwhile, then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares wrote a letter[4] dated December 13, 2012 to then Secretary of Justice Leila M. De Lima referring for preliminary investigation and the filing of appropriate information in court, if evidence so warrants, the attached Joint Complaint-Affidavit[5] of Imelda M. Alcantara, Franklin B. Mendoza, Leticia Lorna L. Dosado, Daniel R. Llavor, Fabian Caesar B. Exmundo and Renato S. Corpuz, recommending the criminal prosecution of the accused. The said letter also stated that it constitutes the authority and approval for the filing and institution of the criminal complaint and the corresponding filing of the information before the appropriate court pursuant to the provisions of Section 220 of the NIRC of 1997, as amended.

In the said Joint Complaint-Affidavit, the revenue officers alleged that the total accumulated payments made by the clients of the accused amounted to ₱7,689,021.69, broken down as follows:

Third Party Informant	Income Payments per access to records
Avon Cosmetics, Inc.	₱ 1,261,764.87
BBDO Guerrero	376,470.60
Campaigns and Grey, Inc.	183,411.80
Golden ABC, Inc.	768,890.26
Golden Arches Development Corp.	295,588.21
Harrison Communications, Inc.	973,529.53
McCann Worldgroup Philippines, Inc.	2,643,616.47
Publicis JimenezBasic, Inc.	531,274.24
SM Mart, Inc.	68,041.49
Southeast Asia Food Inc.	175,257.80
United Laboratories, Inc.	349,411.70
Universal Robina Corporation	61,764.73
TOTAL	**₱ 7,689,021.69**[6]

The revenue officers then alleged that after comparison of the gross revenues declared by the accused in his ITR for 2009 as against the revenues he received as certified by his various clients for the same year, they discovered that he deliberately failed to declare his correct tax base by substantially under-declaring his revenues for 2009, to wit:

Taxable Year	Total Revenues from Clients	Gross Income per ITR	Undeclared Gross Income	Percent of Underdeclaration
2009	7,689,021.69	1,178,646.42	6,510,375.27	552%

jc

[4] Exhibits "P-1" and "A-1", docket, vol. I, pp. 278-279.
[5] Exhibits "P-2" and "A-2", docket, vol. I, pp. 280-285.
[6] Total is actually ₱7,689,021.70.

Thereafter, on July 14, 2014, the prosecution filed an Information[7] before this Court charging the accused with the offense of tax evasion defined and penalized under Section 255 of the NIRC of 1997, as amended.

However, in the Resolution[8] dated July 30, 2014, the Court noted that the allegations in the said Information do not clearly show the jurisdiction of the Court insofar as the principal amount of taxes and fees is concerned. Hence, the Court directed the prosecution to take appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount of the case.

Accordingly, the prosecution filed a Manifestation with Motion to Amend Information and Admit Attached Amended Information[9] on September 1, 2014.

In the Resolution[10] dated September 11, 2014, the Court granted the prosecution's Manifestation with Motion to Amend Information and Admit Attached Amended Information.

The Court issued a Warrant of Arrest[11] against the accused on September 22, 2014.

The accused voluntarily appeared before this Court on March 9, 2015 and submitted himself to the jurisdiction of the Court and posted the required bail bond in the amount of ₱20,000.00.[12]

Meanwhile, the prosecution filed a Motion to Amend and Admit Attached Amended Information[13] on December 9, 2014.

During the arraignment held on March 12, 2015[14], the phrase "more or less" in the Amended Information[15] was deleted, and the Amended Information now reads:

[7] Docket, vol. I, pp. 8-10.
[8] Docket, vol. I, pp. 102-106.
[9] Docket, vol. I, pp. 111-114.
[10] Docket, vol. I, pp. 163-166.
[11] Docket, vol. I, p. 180.
[12] Resolution dated March 9, 2015, docket, vol. I, pp. 234-235.
[13] Docket, vol. I, pp. 195-202.
[14] Minutes of the Hearing dated March 12, 2015, docket, vol. I, pp. 238-240.
[15] Docket, vol. I, pp. 200-202.

> That on or about April 14, 2010, in Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, as a registered taxpayer and sole proprietor of an entity doing business under the name and style "Monaco Models and Casting Agency", required to pay internal revenue taxes, did then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in his Income Tax Return (ITR) for taxable year 2009 by declaring therein an income in the amount only of One Million One Hundred Seventy Eight Thousand Six Hundred Forty Six Pesos and 42/100 centavos (Php 1,178,646.42) when, in truth and in fact, said accused earned a total income amounting to Seven Million Six Hundred Eighty Nine Thousand Twenty One Pesos and 69/100 centavos (Php 7,689,021.69) from his various clients, thus failing to pay the correct amount of tax due for taxable year 2009, to the damage and prejudice of the government in the amount of Two Million Fifty Two Thousand Eight Hundred Ninety Three Pesos and Eight Centavos (Php 2,052,893.08) as basic internal revenue tax liability, exclusive of interests and penalties or surcharges, as of the time of the filing of the complaint.

Also, considering that the real name of accused is Bernardo Anacta, the Amended Information was amended to reflect the true name of the accused as "Bernardo Anacta y Basada" also known as "Bernard Anacta y Basada".[16]

The accused, duly assisted by his *counsel de parte*, pleaded "not guilty" during the arraignment.[17]

The preliminary conferences were held on May 27, 2015[18], on June 24, 2015[19], on July 8, 2015[20], on July 15, 2015[21], on July 29, 2015[22], on September 23, 2015[23], and on September 30, 2015[24]. *JL*

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16 Minutes of the Hearing dated March 12, 2015, docket, vol. I, pp. 238-240.
17 Certificate of Arraignment, docket, vol. I, p. 241; Minutes of the Hearing dated March 12, 2015, docket, vol. I, pp. 238-240.
18 Minutes of the Preliminary Conference, docket, vol. I, pp. 257-258.
19 Minutes of the Preliminary Conference, docket, vol. I, pp. 273-277.
20 Minutes of the Preliminary Conference, docket, vol. I, pp. 324-325.
21 Minutes of the Preliminary Conference, docket, vol. I, pp. 326-330.
22 Minutes of the Preliminary Conference, docket, vol. I, pp. 404-414.
23 Minutes of the Preliminary Conference, docket, vol. I, pp. 504-508.
24 Minutes of the Preliminary Conference, docket, vol. II, pp. 777-794.

The prosecution filed its Pre-Trial Brief[25] on July 24, 2015 and Supplemental Pre-Trial Brief[26] on October 8, 2015, while the accused filed his Pre-Trial Brief[27] on October 6, 2015. The pre-trial conference was held on October 14, 2015[28]. The parties filed their Joint Stipulation of Facts and Issues[29] on October 29, 2015 through registered mail and received by the Court on November 4, 2015, which was approved in the Resolution[30] dated January 28, 2016. Thereafter, the Court issued a Pre-Trial Order[31] on February 17, 2016, and the pre-trial was deemed terminated.

During trial, the prosecution presented the following witnesses: (1) RO Leticia Lorna L. Dosado[32]; (2) RO Franklin B. Mendoza[33]; (3) RO Fabian Ceasar B. Exmundo[34]; (4) Ma. Erlinda S. Aguilon[35], Finance Manager - Controllership Group of United Laboratories, Inc.; (5) Cornelia M. Naguit[36], Director - Accounting of Golden Arches Development Corporation; (6) Remigio B. Iringan, Jr.[37], Finance Director of BBDOGuerrero, Inc.; (7) Severo A. Maraño III[38], Chief Accountant of Campaigns & Grey; (8) Madeline Irene Larrazabal-Gutierrez[39], Finance Manager for Comptrollership of McCann Worldgroup Philippines, Inc.; (9) Eduardo D. Ignacio[40], Budget Officer and Office Administrator of Universal Robina Corporation; (10) Emelita Delos Santos[41], Director-Finance – United Laboratories, Inc.; (11)

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[25] Docket, vol. I, pp. 396-403.
[26] Docket, vol. II, pp. 801-846.
[27] Docket, vol. II, pp. 795-799.
[28] Minutes of the hearing dated October 14, 2015, docket, vol. II, pp. 851-853.
[29] Docket, vol. II, pp. 866-908.
[30] Docket, vol. II, p. 1038.
[31] Docket, vol. II, pp. 1050-1085.
[32] Minutes of the Hearing dated February 17, 2016, docket, vol. II, pp. 1090-1091; Exhibit "P-29"; docket, vol. II, pp. 958-973.
[33] Minutes of the Hearing dated March 16, 2016, docket, vol. II, pp. 1128-1132; Exhibit "P-30"; docket, vol. II, pp. 1103-1110.
[34] Minutes of the Hearing dated April 6, 2016, docket, vol. II, pp. 1152-1153; Exhibit "P-31"; docket, vol. II, pp. 1138-1143; Order dated March 22, 2017, docket, vol. III, pp. 1395-1396; Exhibit "P-39"; docket, vol. III, pp. 1385-1390.
[35] Minutes of the Hearing dated May 4, 2016, docket, vol. III, pp. 1185-1188; Exhibit "P-32"; docket, vol. II, pp. 1160-1165.
[36] Minutes of the Hearing dated June 8, 2016, docket, vol. III, pp. 1206-1207; Exhibit "P-33"; docket, vol. III, pp. 1194-1198.
[37] Minutes of the Hearing dated August 24, 2016, docket, vol. III, pp. 1239-1240; Exhibit "P-34"; docket, vol. III, pp. 1224-1228.
[38] Minutes of the Hearing dated October 19, 2016, docket, vol. III, pp. 1283-1285; Exhibit "P-35"; docket, vol. III, pp. 1246-1251.
[39] Minutes of the Hearing dated October 19, 2016, docket, vol. III, pp. 1283-1285; Exhibit "P-36"; docket, vol. III, pp. 1259-1263.
[40] Minutes of the Hearing dated November 9, 2016, docket, vol. III, pp. 1325-1327; Exhibit "P-34"; docket, vol. III, pp. 1303-1307.
[41] Minutes of the Hearing dated November 9, 2016, docket, vol. III, pp. 1325-1327; Exhibit "P-35"; docket, vol. III, pp. 1312-1316.

Annalyn E. Cayetano[42], AVP for Controllership of Premium Global Essences Stores, Inc. (SM Mart, Inc.); and (12) Salvador B. Viray[43], Tax Manager of Nutri-Asia, Inc.

The prosecution filed its Formal Offer of Evidence[44] on April 20, 2017, offering in evidence Exhibits "P-1" to "P-25", and "P-29" to "P-39", inclusive of submarkings.

In the Resolution[45] dated August 4 2017, the Court admitted the prosecution's exhibits except for Exhibits "P-3", "P-6", "P-8", "P-9", "P-12", "P-17", "P-18", "P-19", and "P-25".

The accused filed a Motion for Leave to File Demurrer to Evidence[46] on August 14, 2017 through registered mail and received by the Court on August 18, 2017. On the other hand, the prosecution filed its Opposition [To Motion for Leave of Court to File Demurrer to Evidence dated August 14, 2017][47] on September 15, 2017.

In the Resolution[48] dated November 2, 2017, the Court granted the motion of the accused. Consequently, the accused filed his Demurrer to Evidence[49] on November 17, 2017 through registered mail and received by the Court on November 24, 2017, while the prosecution filed its Opposition [To Accused's Demurrer to Evidence][50] on December 14, 2017.

In the Resolution[51] dated April 5, 2018, the accused's Demurrer to Evidence was denied for lack of merit.

On the other hand, the accused presented the following witnesses: (1) Accused Bernard Anacta[52]; (2) Eduardo Galoy[53], General

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42 Minutes of the Hearing dated December 7, 2016, docket, vol. III, pp. 1341-1344; Exhibit "P-36"; docket, vol. III, pp. 1333-1337.
43 Minutes of the Hearing dated January 18, 2017, docket, vol. III, pp. 1378-1379; Exhibit "P-37"; docket, vol. III, pp. 1365-1369; Order dated March 22, 2017, docket, vol. III, pp. 1395-1396.
44 Docket, vol. III, pp. 1399-1417.
45 Docket, vol. III, pp. 1438-1440.
46 Docket, vol. III, pp. 1450-1454.
47 Docket, vol. III, pp. 1460-1464.
48 Docket, vol. III, pp. 1470-1472.
49 Docket, vol. III, pp. 1474-1493.
50 Docket, vol. III, pp. 1498-1503.
51 Docket, vol. III, pp. 1531-1543.
52 Minutes of the Hearing dated May 9, 2018, docket, vol. V, pp. 2506-2508; Exhibit "A-180"; docket, vol. III, pp. 1552-1564.
53 Minutes of the Hearing dated May 9, 2018, docket, vol. V, pp. 2506-2508; Exhibit "A-181"; docket, vol. IV, pp. 1977-1985.

Manager of Monaco Models and Casting Agency; and (3) Crisha Crae Johns Uy[54], a YouTuber (vlogger) and one of the talents of Monaco Models and Casting Agency.

The accused filed his Formal Offer of Evidence[55] on August 13, 2018 through registered mail and received by the Court on August 28, 2018, offering in evidence Exhibits "A-1" to "A-181", and "A-184" to "A-185", inclusive of submarkings.

In the Resolution[56] dated November 16, 2018, the Court admitted Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", "A-8", "A-9", "A-10", "A-11", "A-12", "A-13", "A-14", "A-15", "A-16", "A-17", "A-18", "A-19", "A-20", "A-21", "A-21-a", "A-21-b", "A-21-c", "A-22", "A-22-a", "A-22-b", "A-23", "A-23-a", "A-23-a"[57], "A-24", "A-24-a", "A-24-b", "A-25", "A-25-a", "A-25-b", "A-26", "A-26-a", "A-26-b", "A-27", "A-27-a", "A-27-b", "A-28", "A-28-a", "A-28-b", "A-29", "A-29-a", "A-29-b", "A-30", "A-30-a", "A-30-b", "A-30-c", "A-30-d", "A-30-e", "A-115", "A-122", "A-128", "A-133", "A-133-a", "A-135", "A-138", "A-139-a", "A-144-a", "A-147", "A-148-a", "A-152", "A-164-a", "A-164-b", "A-165-a", "A-169", "A-170-a", "A-180", "A-180-a", "A-181", "A-181-a", "A-184", "A-184-a", "A-185", and "A-185-a", and denied the rest of his exhibits.

The case was submitted for decision on February 18, 2019,[58] considering the Memorandum (For the Plaintiff)[59] filed on December 28, 2018 and the accused's Memorandum[60] filed through registered mail on February 4, 2019 and received by the Court on February 13, 2019.

STATEMENT OF ISSUE

The issue[61] stipulated by the parties for the Court's resolution is "whether or not the accused, for taxable year 2009, is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended." *Je*

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[54] Minutes of the Hearing dated August 1, 2018, docket, vol. V, pp. 2509-2510; Exhibit "A-185"; docket, vol. IV, pp. 2366-2371.
[55] Docket, vol. V, pp. 2409-2491.
[56] Docket, vol. V, pp. 2512-2514.
[57] But actually marked as Exhibit "A-23-b".
[58] Resolution dated February 18, 2019, docket, vol. V, p. 2579.
[59] Docket, vol. V, pp. 2515-2541.
[60] Docket, vol. V, pp. 2557-2577.
[61] Par. 2, JSFI, docket, vol. II, p. 867.

THIS COURT'S RULING

The Amended Information alleges that the accused failed to supply correct and accurate information in his ITR for taxable year 2009 in violation of Section 255 of the NIRC of 1997, as amended, which provides:

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

Based on the foregoing, to sustain a conviction for failure to supply correct and accurate information in the return, 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 supply correct and accurate information in the return;

2. Accused failed to supply correct and accurate information at the time required by law, rules or regulations; and

3. That such failure to supply correct and accurate information is done willfully. *gr*

Under Sections 51 and 74 of the NIRC of 1997, as amended, every Filipino citizen residing in the Philippines engaged in business or receiving self-employment income is required to file an income tax return and make a declaration of his/her income from all sources, on or before the fifteenth (15th) day of April of each year, to wit:

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**;

xxx xxx xxx

(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

(4) The **income tax return shall be filed** in duplicate by the following persons:

(a) **A resident citizen - on his income from all sources**;

xxx xxx xxx

(C) *When to File.* –

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

xxx xxx xxx

SEC. 74. *Declaration of Income Tax for Individuals.* –

(A) *In General.* – Except as otherwise provided in this Section, **every individual subject to income tax** under Sections 24 and 25(A) of this Title, **who is receiving self-employment income**, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, **shall make and file a declaration of his estimated income** for the current taxable year on or before April 15 of the same taxable year. In general, ***'self-employment income'* consists of the earnings derived by the individual from** the practice of profession or **conduct of trade or business carried on by him as a sole proprietor** or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) *Return and Payment of Estimated Income Tax by Individuals.* – The amount of estimated income as defined in Subsection (C) with respect to which a declaration is required under Subsection (A) shall be paid in four (4) gr installments. The first installment shall be paid at the time of the declaration and the second and third shall be paid on August 15 and November 15 of the current year, respectively. The fourth installment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed. *(Emphasis supplied)*

In relation thereto, Section 32(A)(2) of the NIRC of 1997, as amended, defines what is gross income, 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, the accused is a resident Filipino citizen and the registered owner of Monaco Models and Casting Agency ("Monaco" for brevity).[62] He is a registered taxpayer of Revenue District Office (RDO) No. 50 with Taxpayer's Identification No. 208-223-191-000.[63] Applying the foregoing provisions, the accused is required to file and to supply the correct and accurate information of his income in his ITR. Hence, the first element is established.

As to whether the accused supplied incorrect or inaccurate information in his ITR for taxable year 2009, the prosecution alleges that the income payments of the accused for taxable year 2009 per third party information amounted to ₱7,689,021.69 but the gross income declared in the accused's ITR is only ₱1,178,646.42, thus, an underdeclaration of income in the amount of ₱6,510,375.27. *gr*

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[62] Pars. 1.d and 1.e, JSFI, docket, vol. II, p. 867.
[63] Exhibit "A-3", docket, vol. I, p. 286.

Aside from the certifications on the income payments and taxes withheld made by various companies for the account of the accused for taxable year 2009 mentioned earlier, the prosecution presented the following witnesses who signed or confirmed the said certifications made by their companies:

Exhibit No. of Judicial Affidavit	**Company**	**Witness**	**Income Payment per certification/ testimony**	**Tax withheld per certification testimony**
P-34	BBDO Guerrero, Inc.	Remigio B. Iringan, Jr. Finance Director	not mentioned	56,470.59
P-35	Campaigns & Grey, Inc.	Severo A. Maraño III Chief Accountant	183,411.80	27,511.77
P-33	Golden Arches Development Corporation	Cornelia M. Naguit Director - Accounting	295,588.21	44,338.23
P-36	McCann Worldgroup Philippines, Inc.	Madeline Irene Larrazabal-Gutierrez Finance Manager for Comptrollership	552,941.27	82,941.19
P-36	Harrison Communications, Inc.	Madeline Irene Larrazabal-Gutierrez Finance Manager for Comptrollership	973,529.53	146,029.43
P-36	SM Mart, Inc.	Annalyn E. Cayetano AVP for Controllership of Premium Global Essences Stores, Inc.	68,041.49	10,206.22
P-37	Southeast Asia Food, Inc. (NutriAsia)	Salvador B. Viray Tax Manager	175,257.80	26,288.67
P-32 & P-35	United Laboratories, Inc.	Ma. Erlinda S. Aguilon, Assist. Finance Manager in 2009 & Emelita Delos Santos Director - Finance	349,411.70	52,411.69
P-34	Universal Robina Corporation	Eduardo D. Ignacio Budget Officer and Office Administrator	not mentioned	9,264.71

Below is a summary of the testimonies of the above witnesses during their cross-examination and/or responses to clarificatory questions posed by the Court:

1. Remigio B. Iringan, Jr. (BBDO Guerrero, Inc.) – The Certification was based on the Check Disbursement Summary and Check Vouchers, meaning the payment vouchers made in

preparation for these payments, and they also checked their remittances with the BIR. He did not confirm or verify the said documents with the records of the accused. They did not pay the individual talents of Monaco but they paid the modeling agency. The payments made to Monaco already included the payments to the talents. He cannot confirm if a modeling agency only takes 30% of what was paid as commission and that the 70% goes to the models as their talent fees.[64]

2. Severo A. Maraño III (Campaigns & Grey, Inc.) – The basis for the Certification was the official receipts and billing statements sent by Monaco, and from their system, disbursement book. From the invoices/receipts, they put it in their system and then from the system they generate the 2307. He did not confirm or verify the official receipts or billing statements with the records of the accused. They paid Monaco directly and not the individual talents. He is aware that usually the modeling agency only takes 30% as their income by commission and 70% of which goes to the model as their payment for their talent fees.[65]

3. Cornelia M. Naguit (Golden Arches Development Corporation) – The Certification was based on their accounting records – general ledger, accounts payable voucher, check vouchers, receipts, invoices, but the certification was not confirmed with the accounting records of the accused. When the lead agency (Hemisphere Leo Burnett) bills them, the invoices of the various agencies are attached to the billing statement. The invoices are directly addressed to Golden Arches Development Corporation but the issuer of the invoices is actually the talent-providing agency, which is Monaco. Together with all the other talent-providing agencies, these are submitted to the lead agency and then, it is the lead agency that collects from Golden Arches and it is the one disbursing it to the various talent-providing agencies, but it is their company that issues the withholding tax certificates directly to Monaco. It is the lead agency that collects from them, so the official receipt is from the lead agency but the invoices attached are from the various talent-providing agencies, one of which is Monaco. Moreover, their company does not pay a separate

[64] TSN, August 24, 2016, pp. 10-16.
[65] TSN, October 19, 2016, pp. 13-21.

amount to the talents. They pay Monaco through their lead agency.[66]

4. Madeline Irene Larrazabal-Gutierrez (McCann Worldgroup Philippines, Inc. and Harrison Communications, Inc.) – The total amount paid to Monaco is already inclusive of their fees plus the talent fees of their models. But she is not aware that the modeling agency only takes 30% as commission and 70% of the payment goes to the talents. Even though the Certification (Exhibit "P-11") was issued by Mr. Mervin Q. Dela Cruz, the same was verified in their system and they did not rely on the document (certification) per se but on the entries in their records.[67]

5. Annalyn E. Cayetano (SM Mart, Inc.) – The Certification was based on the monthly alphalist of payees which is a regular report being submitted to the BIR and the VAT list. She did not confirm or verify the documents with the records of the accused. She does not agree that the payments to Monaco included the payments to the individual models of Monaco. She is aware that a modeling agency takes on a certain percentage as income by commission but is not aware as to the exact percentage.[68]

6. Salvador B. Viray (Southeast Asia Food, Inc./NutriAsia) – The Certification is based on the billing of the accused which was sent to their Marketing Division and the billing was forwarded to Accounting for check payment processing and then they paid the amount after deducting the withholding tax. He did not personally go to the business establishment of the accused in order to verify the documents in their office. He is not aware if the company did not pay the individual talents or models of the accused but he agrees that in the billings, the only recipient of their payment is Monaco. He is not sure whether modeling agencies only takes 30% as income by commission and 70% of the payment goes to the individual talents and models of the agencies.[69]

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[66] TSN, June 8, 2016, pp. 11-20.
[67] TSN, October 19, 2016, pp. 32-36.
[68] TSN, December 7, 2016, pp. 17-18.
[69] TSN, March 22, 2017, pp. 5-9.

7. Ma. Erlinda S. Aguilon (United Laboratories, Inc.) – The figures on the Certification was based on the report they submitted to the BIR, and the report was derived from the Monthly Alphalist and Summary of Purchases, and that they merely relied on the Alphalist and they did not see the invoices and the receipts.[70]

8. Emelita Delos Santos (United Laboratories, Inc.) – The Certification was based on the system that they extract. The payments made to Monaco already included the payments to the individual talents or models. But she is not aware that a modeling agency only takes 30% income by commission and 70% of it goes to the individual talents as their talent fees.[71]

9. Eduardo D. Ignacio (Universal Robina Corporation) – The Certification was based on their accounting records. He did not confirm or verify their documents with the records of the accused. They did not pay the individual talents or models of Monaco. He is not aware that the amount paid to the accused already included the talent fee of its individual talents or models. Also, he is not aware that the modeling agency only takes 30% as income by commission and 70% of the amount paid goes to the individual talents.[72]

On the other hand, the accused contends that, being a talent agent, he bills and receives the whole amount for services rendered to his clients by his models and talents but only retains a certain percentage thereof, thirty percent (30%), as his income, which he indicated in his ITR as his total taxable income, while the seventy percent (70%) of the total billings was considered by the accused as the sole earning of the talents and models as their fee, which forms part of their respective income.[73]

As testified to by the accused, for every campaign or project, the talents will get 70% of the talent fee and Monaco will bill the talents 30% as its commission. Item number 5 of the Exclusive Management Agreements executed by Monaco with its talents provides that "By way of remuneration for his services, the TALENT shall pay the AGENT a sum equivalent to thirty percent (30%) of all monies and things of

[70] TSN, May 4, 2016, pp. 26-29.
[71] TSN, November 9, 2016, pp. 29-33.
[72] TSN, November 9, 2016, pp. 18-22.
[73] Par. 5.20, accused's Memorandum, docket, vol. V, p. 2573.

value received by the TALENT, directly or indirectly, as compensation for professional services rendered by the TALENT."[74]

During cross-examination, the accused confirmed that Monaco receives the whole amount of the payment, but the talent gets 70% of the total billing and Monaco gets 30%. However, when Monaco gives the 70% to the talents, these talents do not issue receipts and that Monaco did not withhold the necessary taxes because clients already withhold from the gross.[75] When asked by the Court, the accused clarified that there is no separate billing, only one billing is made but it is stated in the billing that Monaco bills 70% for the talent and 30% for the agent.[76]

Likewise, the accused's witness, Eduardo Galoy, testified that for every campaign or project, Monaco will bill the talents 30% as its commission. The Talent Agreements/Contracts with Publicis JimenezBasic, Inc. state that talents receive 70% of the talent fee and Monaco only receives 30% as its commission. Moreover, the talents are not employees of Monaco. Monaco only supplies talents to the advertising agency; that the advertising agency drafts the contract that will be signed by the talent; and that Monaco only assists the talents as its talent agent.[77]

The accused also presented in evidence the following Exclusive Management Agreements, which indeed provided that the talent shall pay the agent (Monaco) a sum equivalent to 30% of all monies and things of value received by the talent, directly or indirectly, as compensation for professional services rendered by the talent and that the talent authorizes the agent to receive any and all monies belonging to the former by virtue of the agreement; and the agent may deduct therefrom any commission payable to him/her:

Exhibit No.	**Talent**	**Duration of the Agreement**
A-21[78]	Jessy Mendiola	December 19, 2006 to December 19, 2008
A-22[79]	Cherry Ann Kubota	March 4, 2010 to March 4, 2013
A-23[80]	Gail Nicolas	September 28, 2004 to September 28, 2005
A-24[81]	Crisha Crae Johns Uy	July 3, 2008 to July 3, 2011

[74] Q/A20-22, Exhibit "A-180", docket, vol. III, pp. 1556.
[75] TSN, May 9, 2018, pp. 25-28.
[76] TSN, May 9, 2018, p. 32.
[77] Q/A9, 12, 14-18, Exhibit "A-181", docket, vol. IV, pp. 1979-1981.
[78] Docket, vol. I, pp. 331-336.
[79] Docket, vol. I, pp. 337-342.
[80] Docket, vol. I, pp. 343-348.
[81] Docket, vol. I, pp. 349-354.

A-25[82]	Eric Akhnaton Eleazar	September 9, 2009 to September 9, 2010
A-26[83]	Mark Anthony M. Santos	November 11, 2010 to November 11, 2013
A-27[84]	Isabel Blaesi	September 20, 2011 to September 20, 2012
A-28[85]	Aizalyn Carlos	October 20, 2011 to October 20, 2014
A-29[86]	Neil Ryan Uy	October 10, 2011 to October 10, 2014

However, the Court noted that most of the Agreements do not pertain to taxable year 2009. Only Exhibits "A-24" and "A-25" pertain to taxable year 2009.

The accused likewise presented Ms. Crisha Crae Johns Uy, who testified that she signed an Exclusive Management Agreement with Monaco and that she earned 70% of the talent fees paid by the advertising agencies and 30% goes to Monaco as commission as stated in Item 5, Compensation of Agent, of the Exclusive Management Agreement.[87] On cross-examination, Ms. Uy testified that when Monaco pays her, she issues official receipts to Monaco and she is not sure if Monaco withholds taxes.[88]

The accused also presented some of the billing invoices issued by Monaco in taxable year 2009, to wit:

Exhibit No.	Date	Document	Addressed to
A-115[89]	January 5, 2009	Billing Invoice No. 0271	Unilab Consumer Health c/o Publicis JimenezBasic, Inc.
A-122[90]	January 17, 2009	Billing Invoice No. 0289	Monde Nissin Corporation c/o Publicis JimenezBasic, Inc.
A-128[91]	January 24, 2009	Billing Invoice No. 0351	Jollibee Foods Corporation c/o Publicis JimenezBasic, Inc.
A-133[92]	January 26, 2009	Billing Invoice No. 0357	Monde Nissin Corporation c/o Publicis JimenezBasic, Inc.
A-135[93]	February 2, 2009	Billing Invoice No. 0363	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-138[94]	February 6, 2009	Billing Invoice No. 0367	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-139-a[95]	February 6, 2009	Billing Letter	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.

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[82] Docket, vol. I, pp. 355-360.
[83] Docket, vol. I, pp. 361-366.
[84] Docket, vol. I, pp. 367-372.
[85] Docket, vol. I, pp. 373-378.
[86] Docket, vol. I, pp. 379-385.
[87] Q/A5-6 and 15-18, Exhibit "A-185", docket, vol. IV, pp. 2367 and 2369.
[88] TSN, August 1, 2018, pp. 17-18.
[89] Docket, vol. II, p. 526.
[90] Docket, vol. II, p. 549.
[91] Docket, vol. II, p. 571.
[92] Docket, vol. II, p. 588.
[93] Docket, vol. II, p. 595.
[94] Docket, vol. II, p. 601.
[95] Docket, vol. II, p. 603.

A-144-a[96]	March 3, 2009	Billing Letter	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-147[97]	March 17, 2009	Billing Invoice No. 0392	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-148-a[98]	March 17, 2009	Billing letter	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-152[99]	March 23, 2009	Billing Invoice No. 0398	Globe Telecom c/o Harrison Communications
A-164-a[100]	June 26, 2009	Billing Letter	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-165-a[101]	July 9, 2009	Billing letter	United Laboratories, Inc. c/o Publicis JimenezBasic, Inc.
A-169[102]	August 18, 2009	Billing Invoice No. 0504	Monde Nissin Corporation c/o Publicis JimenezBasic, Inc.

The Court noted that these billing invoices are usually worded as follows:

Talent fee of **XXX (TIN: xxx-xxx-xxx)** for project "XXX"
xxx

NET AMOUNT	**PHPXXX**
70% NET AMOUNT	XXX
+15% (or 10%) withholding tax	XXX
GROSS (*Talent*)	**PhpXXX**
30% NET AMOUNT	XXX
+10% withholding tax	XXX
	XXX
+12% VAT	XXX
GROSS (*Agent*)	**PhpXXX**

VAT SALE	TOTAL SALE
VAT EXEMPT SALE	ADD: VAT
VAT ZERO RATED SALE	LESS W/H TAX
	TOTAL NET

Please make check payment payable to MONACO MODEL AND CASTING AGENCY

while the billing letters are usually worded as follows: *ge*

[96] Docket, vol. II, p. 612.
[97] Docket, vol. II, p. 620.
[98] Docket, vol. II, p. 627.
[99] Docket, vol. II, p. 646.
[100] Docket, vol. II, p. 700.
[101] Docket, vol. II, p. 710.
[102] Docket, vol. II, p. 733.

> This is to bill you the amount of **XXX based on 70% (xxxnet) of PhpxxxNET** representing the service of our talent **XXX** for the advertising campaign entitled **"XXX"** in the nature of **xxx** for product **XXX**.
>
> Please make check payable 100% to: **XXX** (name of talent)
> **TIN: XXX-XXX-XXX**

However, one of the billing invoices (Exhibit "A-152") does not show the 70%-30% breakdown. The particulars of the said billing invoice merely state "Talent fee of CHE RAM for project 'SHOW' INTERNET/WEB USAGE for product GLOBE" and then shows the NET AMOUNT, 15% withholding tax and 12% VAT.

From all of the foregoing, it appears that Monaco's clients only pay Monaco and not the individual talents. However, it is not clear whether these payments are inclusive of the payments for the talents. While some of the witnesses testified that they are aware that a certain percentage of the payment goes to the talent, some of the witnesses testified that they have no knowledge. It should be noted that Monaco's clients are not privy to the Exclusive Management Agreements executed between Monaco and its talents. While the (1) Product Endorsement Agreement[103] executed between MONDE-M.Y. SAN Corporation and Publicis JimenezBasic, Jessy Mendiola Tawile, and Monaco, represented by Bernard Anacta as Manager; and (2) Talent Agreement[104] executed between United Laboratories, Inc., Publicis JimenezBasic, David Agbulos and Monaco, represented by Bernard Anacta as Manager, provides that the client shall pay the talent fees as follows: Talent (70%) and Manager (30%), both agreements were only signed by the talents and Monaco.

On the other hand, based on the billing invoices of Monaco, although there is an instruction to make all checks payable to Monaco, the TIN of the talent is actually provided in the billing invoices which suggests that payments are actually for the account of both the talent and Monaco and both should be subjected to withholding. However, it appears that only Monaco was subjected to withholding by the clients and not the talents. The billing letters, on the other hand, although issued by Monaco, clearly instructs that the check must be payable to the talent. However, no witness was presented from Publicis JimenezBasic, Inc., to which most of the billing invoices and all of the billing letters were addressed, to clarify this matter. *gc*

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[103] Exhibit "A-133-a", docket, vol. II, pp. 589-593.
[104] Exhibit "A-164-b", docket, vol. II, pp. 701-708.

Some of the witnesses testified that they issued the payment based on the billings of Monaco. However, the relevant billing invoices, billing letters and official receipts that were issued by Monaco to these clients that could have clarified how these clients are billed for these transactions and who issues the official receipts when payment is received were not presented in evidence. While most of the witnesses testified that they do not make payments to the individual talents, one of the witnesses testified that they are not aware if they did not make payments to the talents. Moreover, the accused's witness, Ms. Uy, testified that whenever she receives payment from Monaco, she issues an official receipt to Monaco and not to the client.

Thus, the evidence presented in this case raises doubt and confusion as to whether the accused supplied incorrect and inaccurate information in his ITR for taxable year 2009. It appears that both Monaco and its clients record the same transaction in a different manner and it is not clear whether the accused incorrectly recorded these transactions. Hence, the Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused failed to supply the correct and accurate information in his ITR filed for taxable year 2009. Accordingly, the Court finds it no longer necessary to determine whether the third element of willfulness was established by the prosecution.

As to the civil aspect of the case, the same is deemed simultaneously instituted and jointly determined with the instant criminal case pursuant to Section 7(b)(1) of Republic Act (RA) No. 1125, 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."

Moreover, it is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[105] *jc*

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[105] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962.

Similarly, the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases.[106]

"Preponderance of evidence" means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[107] "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[108]

In this case, the Letter of Authority[109] dated November 8, 2012 and received on November 9, 2012, the undated Preliminary Assessment Notice[110] received on June 10, 2015, and the undated Formal Letter of Demand[111] received on April 11, 2016 for taxable year 2009 were presented in evidence. However, the Court noted that there was no Assessment Notice presented in evidence.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[112], the Supreme Court held that:

> **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 (*Emphasis supplied*)

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[106] *Emilia Lim vs. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012.
[107] *Habagat Grill vs. DMC-Urban Property Developers, Inc.*, G.R. No. 155110, March 31, 2005.
[108] *Republic of the Philippines, represented by the Chief of the Philippine National Police vs. Thi Thu Thuy T. De Guzman*, G.R. No. 175021, June 15, 2011.
[109] Exhibits "P-5" and "A-5", docket, vol. I, p. 288.
[110] Exhibits "P-20" and "A-20", docket, vol. I, pp. 322-323.
[111] Exhibit "P-38", docket, vol. III, pp. 1391-1393.
[112] G.R. No. 128315, June 29, 1999.

In relation thereto, the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[113], emphasized the importance of stating the due date in the FAN, to wit:

> **A final assessment notice provides for the amount of tax due with a demand for payment.** This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."
>
> xxx xxx xxx
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> xxx xxx xxx
>
> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."** This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period."**

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

The disputed Final Assessment Notice is not a valid assessment.

xxx xxx xxx

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 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 substantive 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. (*Emphasis supplied, citations omitted*)

In this case, the second to the last paragraph of the FLD[114] provided as follows:

> In view thereof, you are requested [to] pay your aforesaid deficiency tax liabilities, through the duly authorized agent bank in which you are enrolled, **within the time shown in the enclosed assessment notice.** (*Emphasis supplied*)

However, there was no enclosed assessment notice that shows the due date for payment of the deficiency income tax. Thus, the FLD did not contain a definite and actual demand to pay.

Applying the foregoing pronouncements by the Supreme Court, the subject assessment is invalid for failure to demand payment of taxes within a prescribed period.

WHEREFORE, premises considered, accused Bernardo Anacta y Basada a.k.a Bernard Anacta y Basada is **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt. No civil liability.

SO ORDERED.

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

I CONCUR:

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

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114 Exhibit "P-38", docket, vol. III, p. 1391.

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice