REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-452 and O-453** (NPS Docket No. XVI-INV-13J-00353) *For: Violations of Sections 254 and 255 of the 1997 NIRC, as amended.*
-versus-	Members: **BAUTISTA**, *Chairperson* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
JEANE CATHERINE LIM NAPOLES, *Accused.*	Promulgated: DEC 06 2017 4:00 p.m.

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RESOLUTION

For resolution is accused's Submission (Demurrer to Evidence), with attached Demurrer to Evidence, filed by registered mail on October 23, 2017; with plaintiff's Comment and Opposition (Re: Accused's Demurrer to Evidence) filed on November 3, 2017.

On October 5, 2017, the Court ordered accused to file her demurrer to evidence within ten (10) days from receipt of the Resolution, and for the prosecution to be given the same period from receipt of the demurrer to evidence to file its comment or opposition thereto. Accused received her copy of the Resolution on October 11, 2017. Hence, she had until October 23, 2017[1] to file her demurrer to evidence.

On October 23, 2017, accused timely filed her Submission (Demurrer to Evidence), with attached Demurrer to Evidence. She

[1] October 21, 2017 fell on a Saturday.

moves for her acquittal pursuant to *Section 23, Rule 119 of the Revised Rules of Criminal Procedure* since the totality of the evidence presented by the prosecution is insufficient to establish her guilt beyond reasonable doubt. Accused claims that the prosecution failed to establish the circumstances and elements of attempt to evade or defeat tax and failure to file return under *Sections 254 and 255 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, for the following reasons:

1. The evidence of the prosecution shows that accused, at the time of purchase of the condominium, is a non-resident Filipino citizen and a taxpayer registered under *Executive Order ("EO") No. 98*, hence is not required to pay any tax or file any return;

2. The evidence of the prosecution is insufficient to prove the element of willfulness, an essential element of the crimes charged; and

3. The prosecution failed to determine the value of the property in question, thus placing in question the amount of tax that must be paid by accused, engendering reasonable doubt as to the guilt of accused.

Accused cites *Section 14(2), Article III of the 1987 Philippine Constitution*, which provides that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." She avers that the prosecution has the burden to prove all the essential elements of the crime with which an accused is charged, and to establish that she is guilty of said crime beyond reasonable doubt; that in the absence of such degree of guilt, accused is entitled to an acquittal; and that in this case, the prosecution miserably failed to rebut this presumption.

Accused likewise relies on *(1) Section 23(B) of the 1997 NIRC* which provides that a "nonresident citizen is taxable only on income derived from sources within the Philippines," and *(2) Section 5 of Revenue Regulations ("RR") No. 02-40* which states by analogy for aliens intending to reside in the Philippines, that if the purpose is of such nature that an extended stay may be necessary for its accomplishment, and to that end makes his/her home temporarily, the taxpayer becomes a resident. Accused applied the foregoing to her case wherein she is a non-resident Filipino maintaining her physical presence in the United States of America ("U.S.") since 2010, with a definite intention to reside therein to study; that although her stay was for a fixed purpose, because of the length of her extended stay to accomplish her purpose, she became a temporary resident of the U.S.; that the Grant Deed itself states that accused's address on record is the U.S.; and that, clearly, accused considered said address as her residence while studying in the U.S.

It is insisted on by accused that *EO No. 98* made the Taxpayer's Identification Number ("TIN") a mandatory requirement in all applications for any government permit, license, clearance, official paper, or document by the transacting public; that, consequently, not all persons issued a TIN are income earners; that Revenue District Officer Florante Aninag ("RDO Aninag") testified that accused was still a taxpayer registered under *EO No. 98* at the time of purchase of the Los Angeles property; that RDO Aninag likewise issued a Certification dated September 24, 2013 with a statement that accused has registered *per EO No. 98* only, and for this reason, accused has no return filed; and that being registered under *EO No. 98*, accused is not required to file any Income Tax Return ("ITR").

Moreover, accused claims that the prosecution failed to prove the essential element of willfulness; that it tried to establish willfulness by simply inferring that by virtue of accused's supposed spending money greater that her reported income, she must have willfully suppressed or under reported her income; that, however, the Bureau of Internal Revenue ("BIR") did not make a final and definitive determination of the amount of taxes allegedly due from her at the time the cases were filed with the Department of Justice ("DOJ"); that there was no Letter of Authority covering the assessment issued against her; and that at the time of the alleged investigation, accused was abroad completing her studies in the U.S. Moreover, accused alleges that the lack of a preliminary investigation explains why the BIR failed to properly allege and prove the element of willfulness.

Lastly, it is claimed by accused that the value of the property must be established in order to determine the factual basis of any criminal or civil action for tax collection.

On November 3, 2017, plaintiff filed their Comment and Opposition (Re: Accused's Demurrer to Evidence). They claim that *Rule 119 of the Revised Rules of Court* provides only one ground for the dismissal of a case through demurrer to evidence, and that is due to insufficiency of evidence; and that they offered both documentary and testimonial evidence to prove accused's guilt beyond reasonable doubt.

The prosecution avers that accused's claim that she was a non-resident citizen at the time of purchase of the condominium, hence, should be taxed only on income sourced from the Philippines, is not proper since these are matters of evidence to establish a defense on the part of accused, which she can present during trial; and that *Section 22(e) of the 1997 NIRC* sets conditions and qualifications to determine a non-resident citizen, which accused has the burden of proving.

Likewise, as to accused's claim that she is registered under *EO No. 98* and is not required to file any return, the prosecution states that the same is utterly misleading and does not hold water; that during the presentation of RDO Aninag, he testified that accused is registered under *EO No. 98* and was given a TIN for that matter; that, however, he clarified that if accused will later engage in business, she will use the same TIN given under *EO No. 98* and file tax returns using the same; that, thus, accused's claim, that she is not required to file an ITR since she is registered under *EO No. 98,* is totally misleading and completely without basis. The prosecution avers that, at best, accused's claim that she is not required to file any ITR is a matter of defense on her part, and can be proven by her during her time in court

The prosecution posits that lack of notice of assessment can neither prove the existence of willfulness in failure to file an ITR; that the BIR can file a criminal case without an assessment, citing the case of *Ungab v. Judge Cusi*[2]; and that during the trial, it was able to prove that there was willfulness on the part of accused in not filing her ITR and in evading taxes. The prosecution claims that it offered documentary and testimonial evidence that accused was able to purchase properties in Pangasinan and in the U.S. in 2011 and 2012,

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[2] G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877; *Lucas Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009, 588 SCRA 27.

hence, accused earned substantial income without declaring the same in her ITR.

It is averred by the prosecution that, as testified to by Revenue Officer Josephine Madera ("RO Madera"), the value of the property can be computed or derived from the documentary and transfer taxes found on the Grand Deed; and that although the value was not specifically indicated therein, the same is determinable.

Lastly, the prosecution claims that it has established that accused is a Filipino citizen, derived income, and was able to purchase properties inside and outside the Philippines, one of which is the Los Angeles property, without filing any ITR.

The Court now proceeds to resolve the Demurrer to Evidence filed by accused, and finds merit therein.

The question in a demurrer to evidence is whether there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.[3] *Section 1, Rule 33 of the Revised Rules of Court* reads as follows:

> **RULE 33**
> *Demurrer to Evidence*
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> SECTION 1. *Demurrer to evidence.* — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.[4]

It must be emphasized that the evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict the accused, and that the prosecution must rely on the strength of its own evidence, rather than on the weakness of the

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[3] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31 & 176010-11, February 11, 2008, 544 SCRA 324.
[4] Underscoring ours.

evidence for the defense.[5] A demurrer to evidence is an objection or exception by one of the parties in an action at law, to the effect that the evidence which his/her/its adversary produced is insufficient in point of law (whether or not true) to make out his/her/its case or sustain the issue, it challenges the sufficiency of the plaintiff's evidence to sustain a verdict.[6] Hence, in passing upon the sufficiency of the evidence raised in a demurrer, the Court is merely required to ascertain whether there is competent or sufficient proof to support a verdict of guilt.[7]

In the present case, accused was charged in the Information and Amended Information in CTA Crim. Case Nos. O-452[8] and O-453[9], respectively, as follows:

CTA Crim. Case No. O-452

INFORMATION

The undersigned State Prosecutor of the Department of Justice hereby accuses JEANE CATHERINE NAPOLES y LIM of "Failure to File Return and Pay Tax" under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

"That on or before April 15, 2012, in Pasig City, and within the jurisdiction of this Honorable Court, accused JEANE CATHERINE NAPOLES y LIM, a Filipino citizen and a registered taxpayer with Taxpayer Identification No. (TIN) 267-151-949-000, did then and there, willfully, unlawfully and feloniously fail to file tax return and pay tax as said accused during taxable year 2011 acquired and registered under her name a residential condominium worth $1,280,000.00 (or equivalent to Php54,725,120[.]00) located in Los Angeles, California, United States of America, but did not file her Income Tax Return (ITR) and pay tax for

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[5] *Nicholas, et. al. v. Sandiganbayan, et. al.*, G.R. Nos. 175930-31 & G.R. Nos. 176010-11, February 11, 2008, 544 SCRA 324; citing *Madrid v. Court of Appeals*, G.R. No. 130683, May 31, 2000, 332 SCRA 570, citing *People v. Comesario*, G.R. No. L-127811, April 29, 1999, 306 SCRA 400.
[6] *Heirs of Pedro Pasag, et. al. v. Sps. Lorenzo*, G.R. No. 155483, April 27, 2007.
[7] *Id.*
[8] *Records, Vol. 1, CTA Crim. Case No. O-452, Information*, pp. 4-6.
[9] *Records, CTA Crim. Case No. O-453, Amended Information*, pp. 273-275.

> taxable year 2011 as required by laws, rules and regulation, thus resulting to income tax deficiency in the amount of Seventeen Million Four Hundred Sixty One Thousand Thirty Eight Pesos and Forty Centavos (Php17,461,038.40), more or less, exclusive of surcharge and interest, to the damage and prejudice of the government."
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> **CONTRARY TO LAW.**[10]

CTA Crim. Case No. O-453

AMENDED INFORMATION

The undersigned Prosecution Attorneys of the Department of Justice hereby accuse JEANE CATHERINE NAPOLES y LIM of *"Attempt to Evade or Defeat Tax"* under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on or before April 15, 2012, in Pasig City, and within the jurisdiction of this Honorable Court, accused JEANE CATHERINE NAPOLES y LIM, a Filipino citizen and a registered taxpayer with Taxpayer Identification No. (TIN) 267-151-949-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of income tax as said accused during taxable year 2011 acquired and registered under her name a residential condominium worth $1,280,000.00 (or equivalent to Php54,725,120[.]00) located in Los Angeles, California, United States of America, but did not declare the income earned for taxable year 2011, thus resulting to income tax deficiency in the amount of Seventeen Million Four Hundred Sixty One Thousand Thirty Eight Pesos and Forty Centavos (Php 17,461,038.40), exclusive of surcharge and interest, to the damage and prejudice of the government."
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> **CONTRARY TO LAW.**[11]

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[10] Emphases retained, underscoring ours.
[11] Emphases retained, underscoring ours.

Sections 254 and 255 of the 1997 NIRC provide as follows:

> SECTION 254. *Attempt to Evade or Defeat Tax.* — <u>Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall</u>, in addition to other penalties provided by law, upon conviction thereof, <u>be punished by a fine</u> of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) <u>and suffer imprisonment</u> 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.
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> xxx xxx xxx
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> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* <u>- Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return</u>, keep any record, or supply correct the accurate information, <u>who willfully fails to pay such tax, make such return</u>, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, <u>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</u> of not less than Ten thousand pesos (P10,000) <u>and suffer imprisonment</u> of not less than one (1) year but not more than ten (10) years.
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> xxx xxx xxx[12]

On one hand, pursuant to *Section 254 of the 1997 NIRC,* tax evasion connotes the integration of three (3) factors, *viz.*: *(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

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[12] Underscoring ours.

accidental; and *(3)* a course of action or failure of action, which is unlawful.[13]

Moreover, in *Commissioner of Internal Revenue v. Court of Appeals and Spouses Manly*[14], the Supreme Court had the occasion to explain that for a case of tax evasion to prosper, it must be proven that there is a tax due, to wit:

> In Ungab v. Judge Cusi, Jr., we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. However, in Commissioner of Internal Revenue v. Court of Appeals, we clarified that <u>although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.</u>[15]

On the other hand, for accused to be found guilty of violation of *Section 255 of the 1997 NIRC,* three (3) essential elements must be present, to wit: *(1)* accused is a person required to file a return and pay a tax; *(2)* accused failed to file said return and to pay such tax at the times required by law; and *(3)* failure was willful.

Therefore, for accused to be found guilty of violation of *Sections 254 and 255 of the 1997 NIRC*, it is axiomatic that the prosecution proves that there is an unpaid income tax.

A review of the evidence admitted by the Court, *per* August 8, 2017 Resolution, reveals the following contents:

1. ***Exhibit* "P-1"** - authority and approval of the Commissioner of Internal Revenue ("CIR") dated October 10, 2013 to refer the case for preliminary investigation, and for filing of an information;

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[13] *Commissioner of Internal Revenue v. Estate of Toda,* G.R. No. 147188, September 14, 2004, 438 SCRA 290, citing DE LEON, FUNDAMENTALS OF TAXATION 53 (1988 ed.), citing Batter, Fraud under Federal Tax Law 15 (1953 ed.).

[14] G.R. No. 197590, November 24, 2014, 741 SCRA 536, citing *Ungab v. Judge Cusi,* G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877.

[15] Underscoring ours.

2. ***Exhibit* "P-2"** – Joint Complaint-Affidavit executed by RO Madera, Marites Arias ("RO Arias") and Nilda Se ("RO Se") on October 10, 2014, to cause the institution of the corresponding criminal complaints against accused;

3. ***Exhibit* "P-3"** – Grant Deed dated July 20, 2011, issued by Dean C. Logan, Registrar-Recorder/County Clerk of Los Angeles County, California, granting in favor of accused Residential Unit No. 371, a real property in the city of Los Angeles, California, with documentary transfer tax in the amounts of "$1,408.00;$5,760.00" "computed on the consideration of value of property conveyed;"

4. ***Exhibit* "P-4"** – Authentication dated October 4, 2013 issued by Mary Joy B. Ramirez, Vice Consul of the Republic of the Philippines to Los Angeles, California, certifying that the signature of Dean C. Logan on the Grant Deed was made when he is Registrar-Recorder/County Clerk of Los Angeles County, California and verifying the authenticity of said signature;

5. ***Exhibit* "P-5"** – Certification dated October 9, 2013 issued by Ma. Rosario Charo Enriquez-Curiba ("AC Enriquez-Curiba"), Assistant Commissioner, Information Systems Development and Operations Service, certifying that accused has no record of the following: *(a)* donee in a Donor's Tax Return, *(b)* heir of the estate in an Estate Tax Return, *(c)* recipient of a passive income in which a final withholding tax was remitted by the other party, *(d)* seller of shares of stocks and capital assets wherein capital gains tax was paid by her, *(e)* recipient of a loan wherein documentary stamp tax was paid, and *(f)* recipient of passive income wherein final tax was paid;

6. ***Exhibit* "P-6"** – BIR Registration System, Individual Details for TIN 267-151-949-000, verified by Zenaida S. Sumangil ("Ms. Sumangil"), Chief, Collection Section;

7. ***Exhibit* "P-6-a"** – Integrated Tax System ("ITS") print out for TIN 267-151-949-000's Tax Year Summary List by Ms. Sumangil, with result: "Query caused no records to be retrieved[;]"

8. ***Exhibit* "P-6-b"** – Integrated Tax System ("ITS") print out for TIN 267-151-949-000's Return Inquiry Screen by Ms. Sumangil, with result: "Query caused no records to be retrieved. Re-enter[;]"

9. ***Exhibit* "P-7"** – Letter-Reply/Certification dated September 24, 2013 issued by RDO Aninag of Revenue District Office No. 43-A-East Pasig, stating that accused is registered in the district under *EO No. 98;*

10. ***Exhibit* "P-7-a"** – Certification dated September 24, 2013 issued by RDO Aninag, stating that accused has no records of ITR (Annual & Quarterly), among others;

11. ***Exhibit* "P-8"** – Certification dated August 29, 2013 issued by Revenue District Officer Sulpicio M. Adapon ("RDO Adapon") of RDO No. 53-B-Munitinlupa City, certifying that accused did not file her Annual ITRs (BIR Form No. 1701), Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E), Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C), Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), among others, for taxable years 2008 to 2012;

12. ***Exhibit* "P-9"** – Joint Reply-Affidavit dated February 18, 2014, executed by ROs Madera, Arias, and Se, stating that accused should be held liable for violation of *Section 254 and 255 of the 1997 NIRC;*

13. ***Exhibit* "P-13"** – Access Letter dated September 23, 2013 addressed to RDO No. 43-A-East Pasig, directing the issuance of a certification indicating whether accused filed returns for taxable years 2008 to 2012;

14. ***Exhibit* "P-15"** – Letter of Authority (LOA-211-2013-00000141) ("LOA") dated August 27, 2013, authorizing the ROs to examine the books of accounts and other accounting records of accused from taxable year 2008 to 2012;

15. ***Exhibit* "P-16"** – Preliminary Assessment Notice ("PAN") dated September 1, 2014 for deficiency income tax issued against accused, which she received on October 7, 2014;

16. ***Exhibit* "P-17"** – Request for Reconsideration of the PAN filed on October 23, 2014;

17. ***Exhibit* "P-18"** – Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN") dated April 20, 2015 for deficiency income tax, received by accused on May 5, 2015;

18. ***Exhibit* "P-19"** – Protest Letter to the FAN filed on May 22, 2015;

19. ***Exhibit* "P-20"** – Final Decision on Disputed Assessment ("FDDA"), received by accused on April 21, 2016;

20. ***Exhibits* "P-21"** and **"P-21-a"** – Judicial Affidavit of RO Se, with her signature, stating that she, along with the other ROs, executed the Joint Complaint-Affidavit and Joint Reply-Affidavit, and recommended the issuance of the PAN, FAN, FLD, and FDDA against accused;

21. ***Exhibits* "P-22"** and **"P-22-a"** – Judicial Affidavit of RO Arias, with her signature, stating that she investigated accused's tax liabilities and found that she owned properties in Bayambang, Pangasinan with Transfer Certificate of Title ("TCT") Nos. 026-2013001382 and 026-2013001383, and has deficiency income tax liabilities for taxable years 2011 to 2012;

22. ***Exhibit* "P-23"** – Deed of Absolute Sale of TCT Nos. 206555 and 206556 located in Bayambang, Pangasinan, with accused as one of the vendees;

23. ***Exhibit* "P-24"** – TCT No. 026-2013001382 (previously TCT No. 206555);

24. *Exhibit* **"P-25"** - TCT No. 026-2013001383 (previously TCT No. 206556);

25. *Exhibits* **"P-26"** and **"P-26-a"** - Judicial Affidavit of Ms. Andreliza R. Cala ("Ms. Cala"), with her signature, stating that the Certifications were issued pursuant to a request by Atty. Sixto C. Dy, Jr.; and that based on the same, accused has no record of *(a)* donee in a Donor's Tax Return, *(b)* heir of the estate in an Estate Tax Return, *(c)* recipient of a passive income in which a final withholding tax was remitted by the other party, *(d)* seller of shares of stocks and capital assets wherein capital gains tax was paid by her, *(e)* recipient of a loan wherein documentary stamp tax was paid, and *(f)* recipient of passive income wherein final tax was paid;

26. *Exhibit* **"P-27"** - Authorization dated February 15, 2017, allowing Ms. Cala to appear and to testify before the Court on behalf of AC Enriquez-Curiba;

27. *Exhibit* **"P-28"** - Certification dated September 4, 2013, stating that accused has no records of donor's tax returns in the BIR ITS;

28. *Exhibits* **"P-29"** and *Exhibit* **"P-29-a"** - Judicial Affidavit of RDO Aninag, with his signature, stating that he issued a Letter-Reply upon request of Estrela V. Sales, Deputy Commissioner, Legal Group; and that accused did not file tax returns for taxable years 2008 to 2012; and

29. *Exhibits* **"P-30"** and **"P-30-a"** - Judicial Affidavit of RO Madera, with her signature, stating that as part of the preliminary investigation on the alleged tax violations being perpetrated by the Napoles family, their group learned that real properties located in Los Angeles, California and Bayambang, Pangasinan were registered in the name of accused; that they conducted profiling and third party verification, consolidated all data, information and documents, and evaluated the same to come up with their findings and recommendations; that they received a copy of the Grant Deed with Authentication; that they also served Access Letters to RDO No. 43-A-East Pasig and RDO No. 53-B-Muntinlupa to allow them to obtain certified true copies of tax returns filed by accused; that based on the Certifications, accused did not file any tax return; that upon her

request, a Certification was issued by AC Enriquez-Curiba stating that accused has no record of *(a)* donee in a Donor's Tax Return, *(b)* heir of the estate in an Estate Tax Return, *(c)* recipient of a passive income in which a final withholding tax was remitted by the other party, *(d)* seller of shares of stocks and capital assets wherein capital gains tax was paid by her, *(e)* recipient of a loan wherein documentary stamp tax was paid, and *(f)* recipient of passive income wherein final tax was paid; that, thereafter, they received from the Collection Section of RDO No. 43-A-East Pasig the individual details of accused; that they then proceeded to evaluate the data to find out if there were violations committed; that accused substantially under declared her unreported income by more than thirty (30%), which is *prima facie* evidence of her fraudulent scheme to defeat payment of taxes; that they recommended the issuance of a LOA and the filing of criminal charges against accused; that she prepared a Complaint-Affidavit and a Joint Complaint-Affidavit; and that the CIR authorized the filing of the criminal action against accused.

The same August 8, 2017 Resolution denied admission of the following exhibits:

1. ***Exhibit* "P-10"** - Lawyer's Title - for failure to present the original during trial;

2. ***Exhibit* "P-11"** - Title Point - for failure to present the original during trial, and for not being properly identified by any of the prosecution's witnesses;

3. ***Exhibit* "P-12"** - BIR NID Memo Assignment dated August 5, 2013 - for failure to present the same to the Court; and

4. ***Exhibit* "P-14"** - Letter dated August 22, 2013 addressed to RDO Adapon - for not being properly identified by any of the prosecution's witnesses.

Despite the August 8, 2017 Resolution of the Court, plaintiff failed to file their Motion for Reconsideration.

The prosecution concluded that accused committed the crimes of tax evasion, and failure to file an income tax return and pay income tax, based on its finding that accused purchased a property located in Los Angeles, California. It applied the expenditure method, "which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income."[16] Accordingly, the prosecution alleges that accused has unreported income equal to the amount paid to purchase the Los Angeles property; and that, as a result, accused has unpaid income tax, which is the basis of the crimes of tax evasion and failure to file tax return and pay tax.

Exhibit "P-10" pertains to a Lawyer's Title, which pegs the transfer value of the Los Angeles property at $1,280,000.00; whereas, *Exhibit* "P-11" likewise indicates the net taxable value of the Los Angeles property at $1,280,000.00. These were the bases of the revenue examiners' claim that accused did not declare the amount of $1,280,000.00 (equivalent to Php54,725,120.00) as her income, resulting to an income tax deficiency of Php17,461,038.40. However, *Exhibits* "P-10" and "P-11" were denied in the August 8, 2017 Resolution for failure to present the originals thereof during trial, and for not being properly identified by any of the prosecution's witnesses. The former is based on the best evidence rule found in *Section 3*[17], *Rule 130 of the Revised Rules of Court,* that is, the original document must be produced whenever its contents are the subject of inquiry. It must be emphasized that the prosecution never provided any explanation for its failure to present the originals of *Exhibits* "P-10" and "P-11." Additionally, pursuant to *Section 20*[18], *of Rule 132 of the Revised Rules of Court,* only documents duly identified by a competent witness and formally offered in evidence will be admitted for the Court's consideration and evaluation. Accordingly, *Exhibit* "P-11" was denied. Despite said denial of *Exhibits* "P10" and "P-11,"

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[16] G.R. No. 197590, November 24, 2014, 741 SCRA 536, citing *Ungab v. Judge Cusi,* G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877.

[17] Sec. 3. *Original document must be produced; exceptions.* When the subject of inquiry is the contents of a documents, no evidence shall be admissible other than the original document itself, except in the following cases: xxx

[18] Section 20. *Proof of private documents.* Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

plaintiff failed to file any motion for reconsideration of the August 8, 2017 Resolution.

Looking into the evidence admitted by the Court, the only document pertaining to the Los Angeles property is the Grant Deed ("*Exhibit* "P-3"), granting in favor of accused Residential Unit No. 371, with documentary transfer tax in the amounts of $1,408.00 and $5,760.00, computed based on the "consideration of value of property conveyed." While the prosecution claims that the value of the property is determinable since the amount of documentary transfer taxes was provided, the Court does not agree therewith.

While the amounts of documentary stamp taxes were indicated on the Grant Deed, there is no way for the Court to compute the amount paid by accused for the property. This is because the prosecution failed to provide and show proof as to the tax rate or manner of computation applicable to the transaction, which requires reference to the laws of California. It is a hornbook principle that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of processual presumption.[19] The Philippines does not take judicial notice of foreign laws, hence, they must be proven by presenting a copy thereof and by complying with *Sections 24*[20] *and 25*[21] *of Rule 132 of the Revised Rules of Court.*

In the present case, the prosecution failed to present a copy of said law from which the Court can extract the applicable tax rate or manner of computation, in order to arrive at the amount paid by accused. Moreover, based on the wording of the Grant Deed that the documentary transfer tax was "computed on the consideration of value of property conveyed," even if the tax rate or manner of

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[19] *ATCI Overseas Corporation, et. al. v. Echin*, G.R. No. 178551, October 11, 2010, 632 SCRA 528.

[20] SEC. 24. *Proof of official record.* The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[21] SEC. 25. *What attestation of copy must state.* Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

computation is proven, it is still impossible to determine if the tax base is the *(1)* actual amount paid, which will be the undeclared income of accused, to arrive at the income tax unpaid; *(2)* the fair market value of the property; or *(3)* some other basis. This is because the Court cannot take judicial notice of the definition of these terms under the laws of California.

The prosecution failed to prove that there is any income tax due from accused, creating reasonable doubt as to the guilt of accused. Accordingly, the Court finds that the evidence presented is not sufficient to sustain a conviction of accused since the prosecution failed to discharge the burden to prove all the essential elements of the crimes attributed to accused.

It is an opportune time to remind public prosecutors of their vital duty to carefully study the evidence on record and ensure that they conform with the rules of admissibility, in order not to frustrate the State's interest in enforcing its criminal laws and adversely affect the administration of justice.

WHEREFORE, premises considered, accused's Submission (Demurrer to Evidence) is **NOTED,** and the attached Demurrer to Evidence is hereby **GRANTED.** Accordingly, CTA Criminal Case Nos. O-452 and O-453 are hereby **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice