

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-030
For: Violation of Section 255
of R.A. No. 8424

-versus-

Members:

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

BENJAMIN G. KINTANAR,
Accused.

Promulgated:

AUG 11 2010

X-----X *fin. n.*

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MINDARO-GRULLA, J.:

Accused Benjamin G. Kintanar is charged with the crime of willful failure to file his income tax return in violation of Section 255 of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997," as amended, in an Information filed on September 22, 2006, and which reads as follows:

"That on or about the 16th day of April, 2000, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file his Income

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Tax Return (ITR) for the taxable year 1999 on or before the 15th day of April 2000, did, then and there, wilfully, unlawfully and feloniously fail to file his income tax return with the Bureau of Internal Revenue for the year 1999, to the damage and prejudice of the Government in the estimated amount of **P2,320,183.96**, exclusive of penalties, surcharges and interest.

CONTRARY TO LAW.”¹

On January 31, 2007, upon arraignment, accused, duly assisted by his counsel, Atty. Marie Michelle D. Muñoz, pleaded “Not guilty” to the crime charged.²

On February 19, 2007 and March 14, 2007, the requisite Preliminary Conference³ and Pre-trial⁴ were held, respectively.

Trial proceeded during which the prosecution presented five (5) witnesses, namely:

1. Mr. Simplicio Cabantac, Jr.,
2. Atty. Christina Barroga,
3. Mr. Michael Cajandab,
- 4 .Ms. Carmencita Flores, and
5. Ms. Annabelle Alcantara.

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

The documentary exhibits are as follows:

<u>Exhibits</u>	<u>Description</u>
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¹ Docket, p.1.

² Certificate of Arraignment, Docket, p. 153.

³ Minutes of the Preliminary Conference, Docket, pp. 157-161.

⁴ Minutes of the Hearing, Docket, p. 245.

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A to A-2	Letter of Authority No. 00029663 dated March 8, 2003;
A-3	Signature of accused;
B	Second Request for Presentation of Records dated April 21, 2003;
C	Final Notice dated May 5, 2003;
D to D-2	Subpoena Duces Tecum dated June 11, 2003
E to E-1	Preliminary Assessment Notice;
E-2 to E-4	Details of Discrepancies for Taxable Years 1999, 2000, 2001 and 2002;
F to F-2	Formal Letter of Demand dated February 26, 2004;
F-3 to F-5	Details of Discrepancies for Taxable Years 1999, 2000, 2001 and 2002;
F-6	Registry Receipt dated August 2, 2004;
F-7	Signature of recipient;
G to G-7	Assessment Notices Nos. ES-IT-1999-0083, ES-VAT-1999-0084, ES-IT-2000-0085, ES-VAT-2000-0086, ES-IT-2001-0087, ES-VAT-2001-0088, ES-IT-2002-0089, and ES-VAT-2002-0090;
H to H-3	Letter of the accused dated August 31, 2004;
I	Tax Verification Notice dated October 8, 2004;
J	Letter dated September 30, 2004, addressed to the accused;
J-1	Signature of recipient;
K to K-2	Final Decision on Disputed Assessment dated December 13, 2004;
K-3 to K-4	Attachments to the Final Decision on Disputed Assessment;
K-5	Signature of recipient;
L	Certification dated February 19, 2007;
M	Certificate of Registration dated January 1, 1996;
N	Letter-Reply dated January 20, 2003;
P to P-10	Letter dated June 3, 2005, addressed to the Secretary of Justice, with attached Joint Affidavits of Revenue Officers Simplicio V. Cabantac, Jr., Aurelio Agustin T. Zamora, and Sixto C. Dy, Jr.;
P-11	Signature of Revenue Officer Simplicio V. Cabantac, Jr.;
P-12	Signature of Revenue Officer Aurelio Agustin Zamora;
P-13	Signature of Revenue Officer Sixto C. Dy, Jr.;
Q to Q-3	Reply Affidavit dated August 1, 2005
R	Appointment of Simplicio V. Cabantac, Jr., dated September 20, 2005;
T	Memorandum dated July 28, 2003;
U	Certification dated September 17, 2002;
V	Service Record dated June 5, 2007;
W	Revenue Travel Assignment Order No. 5-2006 of Christina C. Barroga, dated January 12, 2006;

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X	Statement of Actual Duties and Responsibilities of Christina Barroga;
Y	Access Letter dated July 18, 2002;
Z	Certification dated July 17, 2007;
AA	Access Letter dated July 19, 2002;
BB	Alpha List of Forever Living Products Philippines, Inc.
BB-1	Portion of the 1999 Alpha List indicating the name of Accused;
CC	Bank of the Philippine Islands Check No. 001031196 dated February 15, 1999;
CC-1	Bank of the Philippine Islands Check No. 001038459 dated March 15, 1999;
CC-2	Bank of the Philippine Islands Check No. 001046360 dated April 15, 1999;
CC-3	Bank of the Philippine Islands Check No. 001054526 dated May 15, 1999;
CC-4	Bank of the Philippine Islands Check No. 001062562 dated June 15, 1999;
CC-5	Bank of the Philippine Islands Check No. 001080470 dated August 15, 1999;
CC-6	Bank of the Philippine Islands Check No. 001089879 dated September 15, 1999;
CC-7	Bank of the Philippine Islands Check No. 001119612 dated December 15, 1999;
CC-8	Dorsal portion of Check No. 001031196;
CC-9	Dorsal portion of Check No. 001038459;
CC-10	Dorsal portion of Check No. 001046360;
CC-11	Dorsal portion of Check No. 001054526;
CC-12	Dorsal portion of Check No. 001062562;
CC-13	Dorsal portion of Check No. 001080470;
CC-14	Dorsal portion of Check No. 001089879;
CC-15	Dorsal portion of Check No. 001119612;
DD to DD-45	Bank Statement of the accused for taxable year 1999;
DD-12-A	cash deposit transaction made on March 16, 1999;
DD-16-A	cash deposit transaction made on April 15, 1999;
DD-20-A	cash deposit transaction made on May 17, 1999;
DD-32-A	cash deposit transaction made on August 16, 1999;
DD-35-A	cash deposit transaction made on September 15, 1999;
EE	BPI Deposit Slip dated August 16, 1999;
FF	BPI Deposit Slip dated September 15, 1999;
GG	Certification dated September 26, 2007;
GG-1	Signature of Victoria T. De Leon;
(Docket, Vol. I, pp. 404-427; Vol. II, pp. 580-581; Vol. II p. 661)	

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

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1. accused himself, Mr. Benjamin G. Kintanar,
2. Ms. Jennifer Abad, and
3. Ms. Marina Mendoza (as accused' hostile witness).

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

The documentary exhibits are as follows:

<u>Exhibits</u>	<u>Description</u>
1	Letter from the Integrated Records Management Office of the Civil Service Commission, dated 24 August 2005;
2	Letter from previous counsel for the accused addressed to the Civil Service Commission;
3	BPI Check No. 0101844 dated 18 March 2002 in favor of Mrs. Marina Mendoza worth P120,000.00;
4 and 4-a	Joint Counter-Affidavit executed by the accused and accused's spouse and subscribed on 11 July 2005;
5, 5-a to 5-g	Certificate of Creditable Tax Withheld at Source in favor of accused and accused spouse for the periods of 1 January 1998 to 31 March 1998, 1 April 1998 to 30 June 1998, 1 July 1998 to 30 September 1998, and 1 October 1998 to 31 December 1998;
6, 6-a to 6-g	Certificate of Creditable Tax Withheld at Source in favor of accused and accused's spouse for the periods of 1 January 2000 to 31 March 2000, 1 April 2000 to 30 June 2000, 1 July 2000 to 30 September 2000, and 1 October 2000 to 31 December 2000;
7, 7-a to 7-g	Certificate of Creditable Tax Withheld at Source in favor of accused and accused's spouse for the periods of 1 January 2001 to 31 March 2001, 1 April 2001 to 30 June 2001, 1 July 2001 to 30 September 2001, and 1 October 2001 to 31 December 2001;
8	Copy of Joint ITR for the year 1999, of accused and his wife;
9	Certification by the BIR signed by one Rosita G. Aquino as Revenue District Officer;

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- | | |
|-------------------|---|
| 10 and 10-a | Copy of Joint ITR for the year 1998 with attached certifications, of accused and his wife; |
| 11 and 11-a | Copy of Joint ITR for the year 2000 with attached certifications, of accused and his wife; |
| 12 and 12-a | Copy of Joint ITR for the year 2001, of accused and his wife; |
| 13 | Certification by the BIR signed by Ernesto Kho as Revenue District Officer; |
| 14 | Certification by the BIR signed by Ernesto Kho as Revenue District Officer; |
| 15 and 15-a | Copy of Joint ITR for the year 1999, of Amelito Dela Cerna Abad and Jennifer K. Abad; |
| 16 and 16-a | Copy of Joint ITR for the year 2000, of Amelito Dela Cerna Abad and Jennifer K. Abad; |
| 17 and 17-a | Copy Joint ITR for the year 2001, of Amelito Dela Cerna Abad and Jennifer K. Abad; |
| 18, 18-a and 18-b | BPI Check No. 1083979 dated 07 December 1999 in favor of Marina Mendoza amounting to P15,000.00, signed by Jennifer K. Abad, and its dorsal portion; |
| 19, 19-a and 19-b | BPI Check No. 0008268 dated 31 July 2000 in favor of Mrs. Marina Mendoza amounting to P5,000.00 signed by Jennifer K. Abad, and its dorsal portion; |
| 20, 20-a and 20-b | BPI Check No. 0023623 dated 20 March 2001 in favour of Mrs. Marina Mendoza amounting to P5,000.00 and signed by Jennifer K. Abad, and its dorsal portion; |
| 21, 21-a and 21-b | BPI Check No. 0035719 dated 18 March 2002 in favour of Marina Mendoza amounting to P5,000.00 and signed by Jennifer K. Abad, and its dorsal portion; |
| 22, 22-a and 22-b | BPI Check No. 0023624 dated 20 March 2001 in favour of Mrs. Marina Mendoza amounting to P5,000.00 and signed by Jennifer K. Abad, and its dorsal portion; |
| 23 | Certification by the BIR signed by Rosita G. Aquino as Revenue District Officer; |
| 24 | Certification by the BIR signed by Ernesto Kho as Revenue District Officer; |
| 25 | Certification by CPA Simplicio E. Baquilod dated 6 January 2000 in favor of Amelito Dela Cerna Abad; |
| 26 | Certification by CPA Rodolfo P. Corbeta in favor of Amelito Dela Cerna Abad; |
| 27 | Certification by CPA Rodolfo P. Corbeta in favor of Amelito Dela Cerna Abad; |

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28 and 28-a Judicial Affidavit of Jennifer K. Abad dated 4
December 2008;
(Docket, Vol. II, pp. 890-909; pp. 1035-1036)

Thereafter, both prosecution and defense were ordered to file their simultaneous memoranda within thirty (30) days from notice.⁵ In compliance, both prosecution and accused filed their Memorandum on June 2, 2010 and May 4, 2010, respectively.

On May 17, 2009,⁶ the case was deemed submitted for decision.

Mr. Simplicio Cabantac, Jr. (Mr. Cabantac), the first witness for the prosecution, testified, among others, that as Revenue Officer IV of the National Investigation Division of the Bureau of Internal Revenue (BIR), he conducted an investigation on the tax liability of accused pursuant to a Memorandum⁷ dated July 28, 2003 which he received based on a complaint filed with the BIR. He personally verified the tax records of accused from the BIR's computer database. He found that accused was registered as an Income and VAT taxpayer in Parañaque District sometime in 1996.⁸ Further, he obtained a Certification⁹ from the Parañaque District Office attesting to the fact of accused's non-filing of his Income Tax Return covering the taxable period 1999 to 2001. Thus, an Access Letter¹⁰ dated July 19, 2002 issued by the BIR and addressed to the Managing Director of Forever Living Products

⁵ Resolution dated March 1, 2010, Docket, pp. 1035-1036.

⁶ Resolution dated May 17, 2009, Docket, p. 1068.

⁷ Memorandum dated July 28, 2003 issued by Mr. Armando R. Rosimo, Chief of Tax Fraud Division, Exhibit "T", Docket, p. 251.

⁸ Certificate of Registration, Exhibit "M", Docket, p. 205.

⁹ Exhibit "U", Docket, p. 252.

¹⁰ Exhibit "AA", Docket, p. 321. **C**

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Philippines, Inc. (FLPPI), to determine the income received by accused from FLPPI within the said period. In compliance, FLPPI through its Comptroller, Mr. Michael T. Cajandab (Mr. Cajandab), issued a Certification¹¹ dated January 20, 2003 showing the total income of accused for taxable years 1999-2001 as follows:

Applicable Year	Amount of Income Payments	Amount of Tax Withheld
1999	12,047,634.30	1,204,763.43
2000	18,738,780.00	1,873,878.00
2001	27,767,655.58	2,776,765.56

Pursuant to the Memorandum Report recommending the issuance of a Letter of Authority for the purpose of conducting a formal investigation of accused, a Letter of Authority¹² was issued on March 28, 2003, and the same was personally served to, and received by accused.¹³ However, accused failed to comply with the Letter of Authority. Hence, a second request for presentation of record was served to accused at his residence.¹⁴ Thereafter, a Final Notice was served at accused's residence in Parañaque. Nonetheless, accused failed to comply with the request of submission of records. A *subpoena duces tecum*¹⁵ was then served to accused by registered mail requiring him to submit the records to the Chief of the Prosecution Division of the BIR.

¹¹ Exhibit "N", Docket, p. 206.

¹² Exhibit "A", Docket, p. 166.

¹³ Exhibit "A-3", Docket, p. 166.

¹⁴ Exhibit "T", Docket, p. 251.

¹⁵ Exhibits "D" to "D-2", Docket, pp. 171-173. **C**

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For failure of accused to comply with the foregoing notices including the *subpoena duces tecum*, a Preliminary Assessment Notice¹⁶ was issued by registered mail. Thereafter, a Formal Letter of Demand with Assessment Notices¹⁷ were served by registered mail and similarly served personally to accused and received by Mr. Arnel Cantong, accused's caretaker.

Mr. Cabantac further testified that the BIR issued to accused another Letter¹⁸ dated September 30, 2004 (which was sent to the residence of accused and it was received by the latter's uncle, Mr. Normando F. Gapayat) giving accused sixty (60) days from the date of filing his protest or until November 3, 2004 to submit the required supporting documents to his Letter of Protest dated August 31, 2004.¹⁹ For failure of accused to attend to the letters and notices of the BIR, he recommended the filing of the criminal charge against accused. Hence, the criminal action was filed against accused before the Department of Justice.²⁰

Atty. Christina C. Barroga (Atty. Barroga), the second witness for the prosecution, testified, *inter alia*, that as part of her functions as OIC-Asst. Revenue District Officer of RDO No. 52, Parañaque City,²¹ she

¹⁶ Exhibits "E" to "E-4", Docket, pp. 174-178.

¹⁷ Exhibits "F" to "F-5", Docket, pp. 179-184.

¹⁸ Exhibit "J", Docket, p. 198.

¹⁹ Exhibit "H", Docket, p. 193.

²⁰ Joint-Affidavit, Exhibit "P-3" to "P-6", Docket, pp. 214-217.

²¹ Exhibit "W", Docket, p. 306.

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executed a Certification²² dated February 19, 2007 on the tax record of accused, which substantially states that accused did not file his Income Tax Return for the years 1999 to 2001. The said Certification was issued based on the printed records stored in the BIR's computer database, which consists of registration information supplied by a taxpayer when he applies for registration. The Certification issued by Atty. Barroga corroborates the prior Certification dated September 17, 2002²³ issued upon the request of the Tax Fraud Division of the BIR.²⁴

Mr. Michael T. Cajandab (Mr. Cajandab), the prosecution's third witness, testified that as Comptroller of FLPPi, he is in-charge of the daily operations of the accounting department. He further testified that upon receipt of the BIR Access Letter dated July 19, 2002, he informed the Managing Director, Ms. Naty Golez, about it, and the latter directed him to comply based on available documents. Thereafter, he verified the data in the alpha list, which contains the total amount of income payments made by the company to its distributors or independent contractors and the total amount of taxes withheld for a particular year. Moreover, he identified various checks to prove the income payments made by FLPPi to accused. He stated that the total income payment made to accused was P12,047,634.30 for the taxable year 1999.

²² Exhibit "L", Docket, p. 204.

²³ Exhibit "U", Docket, p. 252.

²⁴ Access Letter, Exhibit "Y", Docket, p. 308. *C*

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On cross-examination, Mr. Cajandab identified eight (8) checks issued by FLPPi to accused in the total amount of P5,266,667.61, which, as manifested by accused's counsel, is not equal to the assessment amounting to P12,047,634.30.

Ms. Carmencita Flores, the fourth witness for the prosecution, testified that she knows accused as a depositor of the Bank of Philippine Islands (BPI) North Greenhills, Ortigas Ave., San Juan Branch, where she currently holds the position of manager. In compliance with the *subpoena duces tecum*, she brought the microfilm copies of the deposit slips, checks and original bank statements covering the period December 7, 1998 to December 7, 1999 obtained from the head office of BPI. She identified various check payments issued by FLPPi,²⁵ which were either deposited or encashed by accused. Finally, she stated that based on the accused' series of deposit and withdrawal transactions with the bank, she does not know if the income solely came from FLPPi.

Ms. Annabel Alcantara, the prosecution's last witness, testified that she is a Systems Analyst of the BIR and part of her functions as such is to prepare certifications based on report of the BIR and other government offices. She further testified that the Information Systems Operations Service (ISOS) issued a Certification²⁶ dated September 26, 2007 certifying that accused is a registered Professional taxpayer and

²⁵ Exhibits "CC" to "CC-15", Docket, pp. 323-330.

²⁶ Exhibits "GG" to "GG-1", Docket, p. 401. 6

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that the BIR has no record that accused filed his income tax returns for the years 1999 to 2001. Finally, she testified that the entries in the Certification are accurate.

In defense, accused Benjamin G. Kintanar, testified that he is a Filipino citizen, married to Gloria V. Kintanar, a resident of the Philippines, and a registered taxpayer with Tax Identification No. 186-677-853.²⁷ He is engaged in business as a distributor or an independent contractor of Forever Living Products Philippines, Inc., (FLPPI) a duly registered domestic corporation for the taxable years 1999 to 2001, and prior years thereto.²⁸ He testified, on direct examination, that he joined FLPPI sometime in 1996 until 2004. He earned income by way of commissions on the products sold by him and by the people he recruited. The commissions he received are net of withholding tax. Only a photocopy of the 1999 Income Tax Return (ITR)²⁹ was presented because he could not locate the original copy of the document. He likewise identified the Certification³⁰ issued by the Revenue District Office No. 25 of Plaridel, Bulacan, signed by Ms. Rosita G. Aquino, Revenue District Officer, stating that accused has been investigated for the year 1999; Certifications³¹ issued by Revenue Office No. 28 of Novaliches, Quezon City, signed by Mr. Ernest T. Kho, Revenue District Officer, that accused has been investigated for the years 2000 and

²⁷ Minutes of Preliminary Conference dated February 19, 2007, Docket, p. 159.

²⁸ *Ibid.*

²⁹ Exhibit "8", Docket, pp. 710-713.

³⁰ Exhibit "9", Docket, p. 714.

³¹ Exhibits "13 and 14", Docket, pp. 730-731. *L*

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2001, respectively. He further added that these Certifications were only handed to him by Ms. Marina Mendoza (Ms. Mendoza). Also, he identified his ITR for the years 1998,³² 2000,³³ and 2001,³⁴ and his corresponding signatures therein.

Accused stated that Ms. Mendoza, an employee of the BIR who also happens to be a family friend, prepared and filed his ITRs for the years 1999 to 2001. Although there was no written agreement to engage the services of Ms. Mendoza, accused testified that there was a verbal agreement between them that Ms. Mendoza will prepare and file his ITR based on the documents/W2 Forms secured from FLPPi which he furnished her, and he will then affix his signature to the ITR. For her efforts, she was paid professional fees as evidenced by BPI Check No. 0101844 dated March 15, 2002³⁵ in the amount of One Hundred Twenty Thousand Pesos (P120,000.00) drawn from accused' personal account.

On cross-examination, accused identified and affirmed the checks³⁶ which he received from FLPPi for the year 1999. He further affirmed the fact that he maintained a deposit with the BPI North Greenhills Branch under Account No. 107-003489. Moreover, accused admitted that he merely browsed the ITRs for the years 1999 to 2001 which were allegedly prepared by Ms. Mendoza before he affixed his signature. He was a resident of Oranbo, Pasig City from 1972 to 1997;

³² Exhibits "10" and "10-a", Docket, pp. 715-716.

³³ Exhibits "11" and "11-a", Docket, pp. 723-724.

³⁴ Exhibits "12" and "12-a", Docket, pp. 728-729.

³⁵ Exhibit "3", Docket, p. 229.

³⁶ Exhibits "CC" to "CC-15", Docket, pp. 323-330. 

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Merville, Parañaque from 1997 to 2004; back to Oranbo, Pasig City from 2004 to present. When confronted with the address indicated in his ITR, Block 73, Lot 24, Lagro Subdivision, Novaliches, Quezon City, he replied that it was only on July 2, 2008, when he testified for his wife in another case, that he saw the address stated in the ITR.

Ms. Jennifer Abad, the sister of accused, was presented as the second witness for the defense. She testified that Ms. Mendoza is the mother of her friend, Ms. Jennifer Mendoza delos Santos – the godmother of her child and one of her recruits in FLPPi. Further, she testified that Ms. Mendoza, an examiner of the BIR, offered her services in filing their ITRs from 1998 to 2002. She stated that she introduced accused to Ms. Marina for the same purpose – the preparation and filing of their ITRs for 1998. After she and accused engaged the services of Ms. Mendoza, they paid her professional fees each time she filed the ITR. The fees depend on their taxable income and tax due for the particular year.³⁷ To prove these payments, Ms. Abad presented various checks³⁸ issued in favor of Ms. Mendoza. She further identified the ITR that she and her husband filed for the years 1999 to 2001. The entries in the ITRs were allegedly prepared by Ms. Mendoza based on the W-2s issued by FLPPi. Similarly, she identified the Certifications³⁹ and

³⁷ Judicial Affidavit of Jennifer K. Abad filed on December 4, 2008, Docket, p. 791.

³⁸ Exhibits "18" to "22-b", Docket, pp. 809-810.

³⁹ Certification attesting that the accounting records of Ms. Abad's husband, Amelita Abad, has been examined and verified, Exhibit "23", Docket, p. 811; and Letter Certificate of Audit issued by Simplicio Baquilod attesting that he audited the Balance Sheet of Amelito Abad as of December 31, 1999, Exhibit "25", Docket, p. 811.

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CPA reports⁴⁰ given to her by Mrs. Mendoza.

To bolster her testimony that Ms. Mendoza filed accused' ITR in 1999, Ms. Abad stated that Ms. Mendoza often reminded her about it. Considering that her communication with Ms. Mendoza was more accessible than that of accused, Ms. Mendoza would inform her about accused' filing of his ITR, documents that he should give her and the payment for her professional fees.⁴¹ She added that she knew accused would either pay in check or cash as she personally hands over the cash payments to Ms. Mendoza.⁴²

Ms. Marina C. Mendoza, who was presented as defense's hostile witness, admitted having met accused but she denied accused' allegation that she prepared or caused the filing of accused' ITR for the year 1999. She merely advised accused on how to prepare the ITR for the year 1999 and when accused showed his W-2 and BIR Form No. 2316, she instructed accused that the income indicated therein is his income to be filled in the ITR. She denied having received any compensation from accused for the alleged Professional Fee for services rendered. She explained that the checks which she received from accused, including BPI Check dated March 15, 2002 in the

802.

⁴⁰ Exhibits "25" to "27", Docket, pp. 802, 805, and 808.

⁴¹ Judicial Affidavit of Jennifer K. Abad filed on December 4, 2008, Docket, p. 791.

⁴² *Ibid.*

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amount of P120,000.00,⁴³ were in consideration for jewelry sold by her son-in-law, Mr. Dong Moreno, to accused.

Ms. Mendoza also explained that her filing of the Urgent Motion to Quash the *Subpoena Duces Tecum and Ad Testificandum*⁴⁴ was made after due consultation with Atty. Flor of the BIR. She denied having secured Certifications from various government offices from Novaliches and Bulacan. She stated that accused presented to her a Letter of Authority from the Tax Fraud Division and sought her assistance during the accused' investigation with the Department of Justice (DOJ). She merely advised accused to discuss the matter with the examiners.

The issue is whether accused Benjamin G. Kintanar is guilty beyond reasonable doubt for willfull failure to file his income tax return for the taxable year 1999 in violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

The issue is answered affirmatively.

In **Rollie Calimutan vs. People of the Philippines, et. al.** G.R. No. 152133 February 9, 2006, the Supreme Court held that -

"In this jurisdiction, an accused in a criminal case may only be convicted if his or her guilt is established by proof beyond reasonable doubt. Proof beyond reasonable doubt requires only a moral certainty or that degree of proof which produces conviction in an unprejudiced mind; it does not demand absolute certainty and the exclusion of all possibility of error."

In **Imelda Darvin vs. Hon. Court of Appeals and People of the Philippines**, G.R. No. 125044, July 13, 1998, the Supreme Court explained that -

⁴³ Exhibit "3", Docket, p. 914.

⁴⁴ Filed on October 28, 2009. *C*

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"In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Based on the foregoing evidence, the prosecution witness Mr. Cabantac positively identified accused as the one who personally received the Letter of Authority from him.

Mr. Cabantac testified as follows:

"Atty. Maraya:

- Q. So after this Letter of Authority was served on Accused, Kintanar, Mr. Witness, what happened next?
- A. We did not receive any response from him submitting the documents, your Honors. So what we did was issued him this Second Request for Presentation of Records requiring him to submit again the requested documents, your Honors.
- Q. Mr. Witness, since you said you were the one who personally served this Letter of Authority on Accused, Benjamin Kintanar, would you be able to recognize him if you will see him again?
- A. Yes, your Honors.
- Q. Do you see him in Court right now?
- A. I think so, your Honors.
- Q. If you see him in Court, could you please point him and identify him, Mr. Witness?
- A. He's the one with the red-stripe, your Honors. The person with the red-stripe." (*tsn.*, March 21, 2007, pp. 50-51).

Section 255 of the NIRC of 1997, as amended, reads:

"SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess*

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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 (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. xxx" [Emphasis supplied]

Under the foregoing provision, there are three (3) essential elements:

- 1) accused is a person required by law to make or file a return;
- 2) accused failed to make or file the return at the time required by law; and
- 3) failure to make or file the return was willful.

On the first element, suffice it to say that accused' responsibility to make or file a return is clear from Sections 51 and 74 of the NIRC of 1997, as amended, the pertinent provisions of which read:

"SEC. 51. Individual Returns. —

(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"

"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

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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 the instant case, the prosecution has sufficiently established that accused with TIN 186-677-853-000 is registered as an Income and VAT Taxpayer in Revenue District No. 052, Parañaque District, on January 1, 1996, as evidenced by a Certificate of Registration issued in his favor.⁴⁵ Moreover, accused himself admitted during the Preliminary Conference that he is engaged in the business and earning income as distributor or an independent contractor of FLPPi, a duly registered domestic corporation, during the taxable years 1999 to 2001, and prior years thereto.⁴⁶

Hence, accused, as a Filipino citizen residing in the Philippines,⁴⁷ duly engaged in the business as a distributor selling FLPPi products in the Philippines,⁴⁸ is required under the law, specifically Sections 51 and 74 of the NIRC of 1997, as amended, to make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year.

⁴⁵ Exhibit "M", Docket, p. 205.

⁴⁶ Minutes of the Preliminary Conference, Docket, p. 159.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

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As to the second element that accused failed to file the return as required by law, Section 51(B) and (C) of the NIRC of 1997, as amended, provides for the venue and prescribed period for filing Income Tax Returns, the pertinent provisions of which read:

"SEC. 51. Individual Return. —

xxx

(B) Where to File. — Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(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
[Emphasis supplied]

The evidence presented by the prosecution sufficiently establish that accused indeed failed to file the required return as mandated by law.

The prosecution presented a Certification⁴⁹ dated September 17, 2002 issued by Ms. Carmelita R. Bacod, Revenue District Officer of Parañaque City, attesting to the fact that accused has no record on file for the years 1999 to 2001. This was corroborated by another Certification⁵⁰ dated February 19, 2007 issued by Atty. Christina C. Barroga, OIC-Asst. Revenue District Officer of Parañaque City, attesting to the fact therein that accused did not file any Income Tax Return for

⁴⁹ Exhibit "U", Docket, p. 252.

⁵⁰ Exhibit "L", Docket, p. 204. 

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the years 1999 to 2001. Atty. Barroga, a witness for the prosecution, testified that the foregoing Certification was issued based on the printed records stored in the BIR's computer database, which consists of registration information supplied by a taxpayer when he applies for registration. Further, another prosecution' witness, Ms. Annabel Alcantara, a Systems Analyst of the BIR, testified and affirmed that the Information Systems Operations Service (ISOS) had issued a Certification⁵¹ dated September 26, 2007 duly signed by Mr. Alberto A. Pio De Roda, Assistant Commissioner - ISOS,⁵² certifying that accused is a registered Professional taxpayer and that the BIR has no record that accused has filed his income tax returns for the years 1999 to 2001.

Accused presented a photocopy of his annual ITR for year 1999 and undated Certifications issued by Ms. Rosita G. Aquino,⁵³ Revenue District Officer of Revenue District Office No. 25, Plaridel, Bulacan, and Mr. Ernesto T. Kho,⁵⁴ Revenue District Officer of Revenue District Office No. 28, Novaliches, Quezon City, stating therein that the verification and processing of the Income Tax Return and other accounting records of accused for the years 1999,⁵⁵ 2000,⁵⁶ and 2001,⁵⁷ respectively, have been investigated and completed.

⁵¹ Exhibit "GG", Docket, p. 556.

⁵² Exhibit "GG-1", Docket, p. 556.

⁵³ Exhibit "9", Docket, p. 714.

⁵⁴ Exhibits "13" and "14", Docket pp. 730-731.

⁵⁵ Exhibit "9", Docket, p. 714.

⁵⁶ Exhibit "13", Docket p. 730.

⁵⁷ Exhibit "14", Docket p. 731. 

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Significantly, “(T)he best evidence rule, applied to documentary evidence, operates as a rule of exclusion, that is, secondary (or substitutionary) evidence cannot inceptively be introduced as the original writing itself must be produced in court, except in the four instances mentioned in Sec. 3 xxx xxx But even with respect to documentary evidence, the best evidence rule applies only when the content of such document is the subject of inquiry. Where the issue is only as to whether such a document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible [5 *Moran, op. cit.*, pp. 76-77; 4 *Martin, op. cit.*, p. 78]. Any other substitutionary evidence is likewise admissible without need of accounting for the original. Thus, when a document is presented to prove its existence or condition, it is offered not as documentary but as real, evidence. xxx xxx In the case of real evidence, secondary evidence of the fact in issue may readily be introduced without having to account for the non-production of such primary evidence.⁵⁸

On the photocopy of accused' annual ITR for the year 1999, accused claims that he merely relied on his alleged accountant, Ms. Mendoza, in the preparation and filing of the disputed ITR. Accused was made to believe by Ms. Mendoza that the subject ITR was duly filed with the BIR (tsn., July 7, 2008, pp. 49-53).

⁵⁸ Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, Tenth Revised Edition, Vol. II, pp. 682-683.

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This Court finds that the prosecution has clearly established the non-filing of the purported 1999 ITR of accused with the BIR. The subject ITR is of doubtful authenticity and materially flawed with irregularities, as follows:

1. The subject ITR, which provides that accused resides at Block 73, Lot 24, Lagro Subd., Novaliches, Quezon City, contradicts accused's own admission that he resided in Parañaque City during the taxable year 1999;
2. The subject ITR provides that accused is registered under RDO No. 028, Novaliches, Quezon City, which is contrary to the Certificate of Registration⁵⁹ dated January 1, 1996 attesting to the fact that he is registered with RDO No. 052, Parañaque City.
3. The subject ITR was purportedly received by Security Bank on March 14, 2000, but there was no other evidence presented to corroborate this fact.
4. No receipt was presented, nor was there an attempt to present the same, in order to corroborate the alleged filing of the ITR and payment of the disputed taxes for the year 1999.

⁵⁹ Exhibit "M", Docket, p. 205. 6

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5. The prosecution was able to present and prove the authenticity of several Certifications⁶⁰ attesting to the non-filing by accused of the subject ITR for the year 1999.

Moreover, the undated Certifications⁶¹ presented by accused to corroborate his defense that the subject ITR was filed with the BIR, do not contain the official dry seal of the BIR. Apparently, there were inconsistencies therein –

First, accused admitted the fact that he was a resident of Parañaque City in the year 1999.

On cross-examination, accused testified:

"Atty. Francia:

Q. How long have you been residing in Oranbo?

A. From 1972 to 1997.

Q. From 1997 onwards where have you been?

A. I've been transferred at Merville, Parañaque.

Q. So you stayed in Parañaque from 1997 up to?

A. 2003 or 2004." (*tsn.*, July 7, 2008, p. 71).

Second, the purported ITR for the year 1999, however, provides that accused resides in Blk. 73, Lot 24, Lagro Subd., Novaliches, Quezon City and that he is registered with RDO No. 028 or Novaliches, Quezon City.

⁶⁰ See Exhibits "U", "L" and "GG", Docket, pp. 252, 204, and 556, respectively.

⁶¹ Exhibits "9", "13" and "14", Docket, pp. 714, 730, and 731, respectively. 

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Third, the undated Certification⁶² issued by Ms. Rosita G. Aquino of RDO No. 025 provides that the postal address of accused for the year 1999 is at Marilao, Bulacan. The Certification issued by RDO No. 025, Plaridel, Bulacan, is not the proper revenue district to verify and process the ITR and other accounting records of accused.

Hence, these Certifications provide no evidentiary value.

That accused failed to file his Income Tax Return (ITR) for the taxable year 1999 is therefore clearly established.

Consequently, it is now incumbent upon us to determine whether accused willfully failed to file his ITR for the year 1999, in violation of Section 255 of NIRC of 1997, as amended.

This Court finds that the non-filing of the 1999 ITR was done wilfully.

A willful act is described as "[v]oluntary and intentional, but not necessarily malicious"⁶³ but "involves more than just knowledge."⁶⁴ The word "willfulness" is defined by the Black's Law Dictionary as follows:

"The word 'willful' or 'wilfully' when used in the definition of a crime, it has been said time and again, means only intentionally or purposely, as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent."⁶⁵ [Emphasis supplied]

⁶² Exhibit "9", Docket, p. 714.

⁶³ Black's Law Dictionary, Eighth Edition, p. 1630.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, citing Rollin M. Perkins & Ronald N. Boyce, Criminal Law 875-76 (3d ed. 1982). L

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As enunciated by this Court in *People v. Delos Angeles*,⁶⁶ "[w]illful in the tax crimes statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."⁶⁷

The main theory of the defense in this case is the absence of willfulness on the part of accused in the non-filing of the ITR for the year 1999.

Accused testified that he engaged the services of an accountant, Ms. Mendoza, in the preparation and filing of his ITRs from 1999 to 2001. In consideration of the services rendered, accused paid Ms. Mendoza her professional fees. To bolster his claim, he presented BPI Check No. 0101844 dated March 15, 2002⁶⁸ in the amount of P120,000.00, issued in the name of Ms. Mendoza and drawn from his personal account. In the course of Ms. Mendoza's preparation of the subject ITR, accused proffered that he simply provided her the requisite W-2 Forms and other documents secured from FLPPPI. Thereafter, he only affixed his signature thereto without verifying the details allegedly supplied by Ms. Mendoza. Accused testified further that Ms. Mendoza caused the filing of the subject ITR. He admitted that he merely browsed the contents of the ITR before signing the same. He admitted

⁶⁶ CTA Crim. Case No. O-027, November 25, 2009 citing *Mertens (Law of Federal Income Taxation)* Chapter 47.05, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

⁶⁷ *Ibid.*

⁶⁸ Exhibit "3", Docket, p. 229. L

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that he knew Ms. Mendoza as a BIR employee at the time he engaged her services.

In sum, accused maintains that he merely relied on his alleged accountant in the preparation and filing of the subject ITR. Hence, the alleged non-filing of his ITR was not voluntary and willful. Rather, he simply fell prey to the misrepresentations made by his alleged accountant.

This Court is not convinced that accused' non-filing of his 1999 ITR was not voluntary and willful. This Court finds that the circumstantial evidence presented by the prosecution is sufficient to find accused guilty beyond reasonable doubt for his willful failure to file the disputed ITR for the year 1999, in violation of Sec. 255 of NIRC of 1997, as amended.

This Court takes note of the inconsistencies and irregularities surrounding the existence, execution and other circumstances relative to the filing of the purported 1999 ITR of accused, and the Certifications issued by the different Revenue District Officers attesting to the fact that the ITRs and other accounting documents of accused have already been investigated and completed.

As previously discussed, accused himself admitted that he resided in Parañaque City during the taxable year 1999. This fact was corroborated by the Certificate of Registration presented by the prosecution to prove that accused is registered as a taxpayer in

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Parañaque City during the taxable year in question. However, the address in the subject ITR indicated that he resided in Lagro, Novaliches, Quezon City and registered under RDO No. 028. To further complicate the matter, the undated Certification issued by RDO No. 025, Plaridel, Bulacan, provides that accused' postal address is in Marilao, Bulacan.

These inconsistencies and irregularities in the foregoing documentary evidence presented by the defense implies manifest and deliberate acts on the part of accused to conceal and suppress his voluntary and willful non-filing of the ITR for the year 1999.

Accused, however, posed a defense that the foregoing documents were only furnished to him by his alleged accountant, Ms. Mendoza, and that he had no participation whatsoever in securing the same.

Even assuming *arguendo* that accused merely relied on the representations made by his alleged accountant that the subject ITR was duly filed and the foregoing Certifications were executed by the authorized Revenue District Officers of the BIR, his deliberate refusal or avoidance to verify the contents of these documents and inquire on the authenticity thereof under the circumstances obtaining in this case constitutes "willful blindness" on his part.

"Willful Blindness" is defined by Black's Law Dictionary as "[d]eliberate avoidance of knowledge of a crime, esp. by failing to

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make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable."⁶⁹ It "creates an inference of knowledge of the crime in question."⁷⁰

In the instant case, as a reasonable and prudent taxpayer, accused would naturally suspect some wrongdoing or irregularity in the preparation and filing of his ITR by a mere reading of the documents furnished by his alleged accountant. A perusal of these documents readily reveals that it does not bear the official dry seal of the BIR. The purported ITR and undated Certification for the taxable year 1999 reflects two (2) different addresses, which do not refer to the actual residence of accused; and two (2) different Revenue Districts, which do not refer to the correct venue for purposes of filing his ITR, and conducting verification and investigation of the said ITR. Moreover, no BIR receipts were presented to show that the subject ITR was indeed filed. Further, accused' knowledge that Ms. Mendoza was a BIR employee at the time he allegedly availed of her services as his accountant, and his very own admission that he merely browsed the contents of the subject ITR before signing it, aggravate his act of indifference in the faithful observance of the provisions of the NIRC of 1997, as amended.

The prosecution sufficiently presented testimonial and documentary evidence to prove that accused was accorded due

⁶⁹ Black's Law Dictionary, Eighth Edition, p. 1630.

⁷⁰ *Ibid.*

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process from the time of issuance of the Letter of Authority until the issuance of the Final Decision on Disputed Assessment, but accused consistently failed to submit supporting documents pertaining to the taxable year 1999 to dispute the claim of the prosecution. Instead, he deemed it sufficient to submit a Letter of Protest merely reciting that he, in fact, submitted the subject ITR in question without any books of accounts and other accounting documents to support his claim. The belated submission of the subject ITR and Certifications on the part of accused raised questionable integrity as to its authenticity and genuineness.

As to the civil aspect of the instant case, the same is deemed instituted herewith pursuant to Section 7(b)(1) of Republic Act No. 9282,⁷¹ which provides that "criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action 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."⁷²

⁷¹ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, amending for the purpose certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

⁷² *Ibid.* 6

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In the instant case, records show that accused was duly notified by the BIR of the assessment pertaining to his tax deficiencies. A Letter of Authority (LOA) No. 00029663 dated March 28, 2003 was issued by Assistant Commissioner Percival T. Salazar, CESO IV authorizing Revenue Officers Simplicio Cabantac, Jr., Aurelio Agustin Zamora, and Evangline Catotal, to examine the books of accounts and other accounting records of accused and his spouse, a copy of which was personally served and received by accused himself on April 3, 2003.⁷³ For failure of accused to comply with the LOA, the BIR issued a "Second Request for Presentation of Records" on April 21, 2003, reiterating its previous request to present accounting records.⁷⁴ On May 5, 2003, a Final Notice was duly served to accused requesting him to present his accounting records and documents, within ten (10) days from receipt of the said notice.⁷⁵ After accused failed to comply with the foregoing notice, the BIR issued a *Subpoena duces tecum* dated June 11, 2003 ordering accused to appear before the Chief of the Prosecution Division of the BIR on June 25, 2003.⁷⁶ Again, accused failed to comply. Thereafter, a Preliminary Assessment Notice with Details of Discrepancies was served to accused.⁷⁷ Subsequently, for failure of accused to respond, a Formal Letter of Demand dated

⁷³ Exhibits "A" to "A-3", Docket, pp. 166-168.

⁷⁴ Exhibit "B", Docket, p. 169.

⁷⁵ Exhibit "C", Docket, p. 170.

⁷⁶ Exhibits "D" to "D-2", Docket, pp. 171-173.

⁷⁷ Exhibits "E" to "E-4", Docket, pp. 174-178.

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February 26, 2004⁷⁸ together with Details of Discrepancies⁷⁹ and Assessment Notices ES-IT-1999-0083,⁸⁰ ES-VAT-1999-0084,⁸¹ ES-IT-2000-0085,⁸² ES-VAT-2000-0086,⁸³ ES-IT-2001-0087,⁸⁴ ES-VAT-2001-0088,⁸⁵ ES-IT-2002-0089,⁸⁶ and ES-VAT-2002-0090⁸⁷ were simultaneously issued to accused by registered mail and similarly served personally to accused' residence and received by his caretaker, Arnel Cantong.⁸⁸

Finally, on September 3, 2004, accused filed his Letter of Protest⁸⁹ to the deficiency tax assessments on the ground that he filed the requisite tax returns for the years 1999-2002. Apparently, accused failed to attach the 1999 and 2001 ITRs referred to in the Letter of Protest prompting the BIR to issue another Letter⁹⁰ dated September 30, 2004 signed by Mr. Arnel Guballa, Chief of the National Investigation Division giving accused sixty (60) days from date of filing of his protest or until November 3, 2004 to submit the required supporting documents. Once again, accused failed to comply. Thereafter, the BIR issued a

⁷⁸ Exhibits "F" to "F-2", Docket, pp. 179-181.

⁷⁹ Exhibits "F-3" to "F-5", Docket, pp. 182-184.

⁸⁰ Exhibit "G", Docket, p. 185.

⁸¹ Exhibit "G-1", Docket, p. 186.

⁸² Exhibit "G-2", Docket, p. 187.

⁸³ Exhibit "G-3", Docket, p. 188.

⁸⁴ Exhibit "G-4", Docket, p. 189.

⁸⁵ Exhibit "G-5", Docket, p. 190.

⁸⁶ Exhibit "G-6", Docket, p. 191.

⁸⁷ Exhibit "G-7", Docket, p. 192.

⁸⁸ Exhibits "F-6" to "F-7", Docket, p. 179.

⁸⁹ Exhibit "H", Docket, p. 193.

⁹⁰ Exhibit "J", Docket, p. 198.

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Final Decision on Disputed Assessment⁹¹ dated December 13, 2004 personally served at the residence of accused on April 12, 2005.⁹²

Section 228 of the NIRC of 1997, as amended, provides that "[w]ithin sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."⁹³ Moreover, "[i]f the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."⁹⁴

Thus, it is clear that the BIR's Final Decision on Disputed Assessment has attained finality for failure of accused to appeal before this Court within the 30-day period from the date of receipt of the said decision. Absent any proof of irregularities in the performance of duties, the assessment duly made by the BIR examiner and approved by his superior officers will not be disturbed. Accused is therefore barred from disputing the validity of the subject assessment.

Accused is liable to pay the assessed income tax deficiencies for the taxable year 1999, in accordance with the Final Decision on

⁹¹ Exhibit "K" to "K-4", Docket, pp. 199-203.

⁹² Exhibit "K-5", Docket, p. 199.

⁹³ Section 228, NIRC of 1997, as amended.

⁹⁴ *Ibid.*

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Disputed Assessment⁹⁵ issued against him, which have become final and demandable, to wit:

<u>Taxable year 1999</u>	
Deficiency income Tax	P 2,320,183.96
Surcharge	1,160,091.98
Interest – 03/31/2004	3,885,148.04
Total Income Tax Deficiency	P 6,205,331.99⁹⁶

Section 255 of the NIRC of 1997, as amended, provides that upon conviction, a fine of not less than Ten Thousand Pesos (10,000.00) and imprisonment of not less than one (1) year but not more than ten (10) years shall be imposed. There being no showing that accused is disqualified from the scope of the Indeterminate Sentence Law,⁹⁷ the same shall apply. Hence, the imposable penalty shall not exceed the maximum fixed by law, which is 10 years, and the minimum penalty, shall not be less than 1 year, the minimum prescribed by the law violated.⁹⁸

In the instant case, this Court finds that the imposition of a fine of P10,000.00 and the indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, is deemed proper under the circumstances. This is without prejudice to Section 280 of the NIRC of 1997, as amended, which provides for the imposition of subsidiary penalty in the event that accused has no property with

⁹⁵ Exhibit "K", Docket, p. 462.

⁹⁶ Exhibit "K-4", Docket, p. 466.

⁹⁷ Act No. 4103, as amended by Act No. 4225.

⁹⁸ Section 1, Act No. 4103, as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law.

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which to meet the fine imposed upon him by the court or is unable to pay such fine.

It is axiomatic that in the prosecution of offenses, the prosecution must rely on the basis of its own strength. Corollarily, it is incumbent upon the prosecution to establish the guilt of the accused beyond reasonable doubt (**People. vs. Tantiado**, 213 SCRA 265 [1992]). The overriding consideration is not whether the Court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt (**People vs. Salangga**, 234 SCRA 407). A conviction in a criminal case must be supported by proof beyond reasonable doubt, which means moral certainty that accused is in fact guilty of the offense charged (**People vs. Gil**, 284 SCRA 563).

In fine, as basic in the law that the successful prosecution of a case does not depend on the weakness of the defense, but on the strength of evidence of the prosecution, this Court is convinced that the weight of evidence presented by the prosecution in the instant case is sufficient to establish the guilt of the accused beyond reasonable doubt. The requisite quantum of proof has been met to justify the conviction of the accused in herein case.

WHEREFORE, this Court finds accused Benjamin G. Kintanar **GUILTY beyond reasonable doubt** for willful failure to file his income tax return for the taxable year 1999 in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and he is **L**

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hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum term of imprisonment, and also, he is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

As regards civil liability, accused is **ORDERED** to **PAY** his deficiency income tax for the taxable year 1999, the amount of **P6,205,331.99** inclusive of penalties, surcharges and interests, plus 20% delinquency interest per annum counted from April 12, 2005 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(on wellness leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

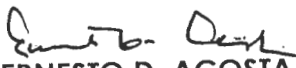
ATTESTATION

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


CAESAR A. CASANOVA
Associate Justice
Acting Chairperson, 2nd Division

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice