REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
QUEZON CITY

## FIRST DIVISION

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| **PEOPLE OF THE PHILIPPINES,**<br>**Plaintiff,**<br>**-versus-**<br><br>**ELISEO CO,**<br>**Accused.** | **CTA CRIM. CASE NO. O-108**<br>For: Violation of Sec. 254 of the NIRC of 1997 |
| **PEOPLE OF THE PHILIPPINES,**<br>**Plaintiff,**<br>**-versus-**<br><br>**ELISEO CO,**<br>**Accused.** | **CTA CRIM. CASE NO. O-109**<br>For: Violation of Sec. 267 of the NIRC of 1997 in relation to Art. 183 of the RPC |
| **PEOPLE OF THEPHILIPPINES,**<br>**Plaintiff,**<br>**-versus-**<br><br>**ELISEO CO,**<br>**Accused.** | **CTA CRIM. CASE NO. O-110**<br>For: Violation of Sec. 255 of the NIRC of 1997 |
| **PEOPLE OF THE PHILIPPINES,**<br>**Plaintiff,**<br><br>**-versus-**<br><br>**ELISEO CO,**<br>**Accused.** | **CTA CRIM CASE NO. O-111**<br>For: Violation of Sec. 257(B) of the NIRC of 1997<br><br>**Members:**<br><br>**ACOSTA, Chairperson**<br>**UY, and**<br>**FABON-VICTORINO, *JJ.***<br><br>**Promulgated:**<br>OCT 03 2012 : 1:30 p.m. |

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# RESOLUTION

**UY, *J.*:**

For resolution is accused's **DEMURRER TO EVIDENCE** filed on July 27, 2012; together with the prosecution's **"COMMENT/OPPOSITION (Demurrer to Evidence)"** filed on August 6, 2012.

In his Demurrer to Evidence, accused contends that these consolidated cases should be dismissed on the ground that the prosecution failed to prove the identity of the accused; and that there is insufficient evidence to prove the income that was supposedly declared by the accused in 1998.

Accused claims that in any criminal prosecution, the identity of the accused is an essential element for conviction, and allegedly, in these cases, there is absolutely no evidence on record to prove the identity of the accused, that the person who was arraigned in these cases, is the same person who supposedly committed the crime charged in the information. Although during pre-trial, the prosecution requested for a stipulation as to the identity of the accused, this was denied by the accused. As such, there is allegedly no stipulation as to the identity of the accused.

Subsequently, the prosecution allegedly made no effort to prove the identity of the accused during its presentation of evidence in chief, through the testimonies of its two (2) witnesses: Ava Globasa and Gilberto Ramos. As can be seen from the formal offer of testimonies of the prosecution's witnesses, none of them were offered for the purpose of proving the identity of the accused and that the person who was arraigned in these cases is the same person who supposedly committed the crimes charged in the Informations. Thus, there is allegedly insufficient evidence to support a conviction, and on this ground alone, these cases should be dismissed.

Aside from the foregoing, accused submits that in all the Informations in these consolidated cases, the 1998 Income Tax Return is an essential element of the crimes charged, as well as the contents thereof. Although the prosecution formally offered in evidence Exhibit "G" as a purported Annual Income Tax (Return) of Eliseo Co for taxable year 1998, in the Court's Resolution dated January 12, 2011, this Court denied Exhibit "G" from admission into evidence. This Resolution has not been overturned and continues to be the law of the case.

There is therefore, allegedly no evidence for this Court to consider regarding the contents of this Income Tax Return for 1998. And it being an essential element of the crimes charged in the Informations, the lack of an admissible copy thereof is allegedly fatal to the prosecution's case. Clearly, there is insufficient evidence to warrant a conviction in these cases and this Court should dismiss the same on the ground of insufficiency of evidence.

On the other hand, the prosecution counter-argues that the identity of the accused was sufficiently established; that the evidence on record referred to the accused as ELISEO CO in this case as MR. ELISEO CO with a Tax Identification Number (TIN) 108-975-719-00, married to Pacita Lim and is the registered owner of Divisoria Dried Fish Center and General Merchandise, which is allegedly the supplier of the Bureau of Corrections. Records also disclose that a person with the name Eliseo Co appeared before this Court during the arraignment of this case.

The prosecution further contends that accused's active participation in this case, without offering any proof that he is not the same person charged in the Information, raises a presumption that he is the person identified to have committed the offenses charged. With respect to the allegation of the accused that there is no evidence to prove the contents of the Income Tax Return for 1998, the prosecution argues that secondary evidence, such as testimonies of competent witness, is admissible under Section 5 Rule 130 of the Rules of Court.

This Court finds merit in the instant demurrer.

A Demurrer to Evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.[1] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court then ascertains whether there is competent or sufficient evidence to sustain the indictment or to support the verdict of guilt.[2]

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded to accord to the circumstances. To be considered sufficient therefore, the evidence must prove (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[3]

The Informations charging accused in the instant consolidated criminal cases and the pertinent legal provisions violated read as follows:

**CRIMINAL CASE No. O-108 for VIOLATION OF SEC. 254 OF THE NIRC OF 1997**

**INFORMATION**

"The undersigned Acting Prosecutor of Manila hereby accuses **ELISEO CO** of the criminal offense of violation of Section 254 of the National Internal Revenue Code of 1997, committed as follows;

> That during the taxable year 1998, or anytime prior or subsequent thereto in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, with willful intent to evade and defeat payment of the tax due the government, did then and there, unlawfully, feloniously file with the Bureau of Internal Revenue (BIR) a false and fraudulent Income Tax Return (ITR) for the taxable year 1998, by then and there purposely and maliciously declaring in the said tax return that he received income only in the total amount of P9,247,410.40 for the taxable year 1998 derived from his business under the name Divisoria Dried Fish Center and General Merchandise, thereby facilitating the commission of tax evasion by willfully suppressing his true and accurate income for taxable year 1998 in the amount of P14,057,704.57, and as a consequence of which the above-named accused, fraudulently declared and filed with

[1] Republic of the Philippines v. Estate of Alfonso Lim, Sr., GR 164800, July 22, 2009, citing Rivera v. People, G.R. No. 163996, June 9, 2005, 460 SCRA 85, 91.
[2] Gutib vs. CA, G.R. No. 131209, August 13, 1999.
[3] *Id.*

the BIR for income tax purposes, instead of the true income in the amount of P14,057,704.57, thereby defrauding and causing damage and prejudice to the government in the amount if P4,810,294.17 inclusive of civil penalties.

CONTRARY TO LAW."

**SEC. 254. Attempt to Evade or Defeat Tax.** - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

**CRIMINAL CASE No. O-109 for Violation of Sec. 267 in relation to Art. 183 of the RPC (Revised Penal Code)**

**INFORMATION**

"The undersigned Acting Prosecutor of Manila hereby accuses **ELISEO CO** of the criminal offense of violation of Section 267 of the National Internal Revenue Code of 1997 in relation to Article 183 of the Revised Penal Code, committed as follows:

That on or about April 14, 1998, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-name accused willfully, unlawfully, feloniously and knowingly made untruthful statements or falsehood upon material matter required by the National Internal Revenue Code of 1997 in his submitted verified Income Tax Returns for the taxable year of 1998 before the Bureau of Internal Revenue (BIR) by stating therein that his income received for such taxable year is only P9,247,410.40 when in truth and in fact the above-named accused received the income of P14,057,704.57 as shown by his Income Statements for 1998 and book of accounts, thereby defrauding and causing damage and prejudice to the government in the amount of P4,810,294.17 inclusive of civil penalties.

CONTRARY TO LAW."

**SEC. 267. Declaration under Penalties of Perjury.** - Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

**Article 183. False Testimony in Other Cases and Perjury in Solemn Affirmation.** – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

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**CRIMINAL CASE No. O-110 for Violation of Sec. 255 of the NIRC of 1997**

**<u>INFORMATION</u>**

"The undersigned Acting Prosecutor of Manila hereby accuses **ELISEO CO** of the criminal offense of violation of Section 255 of the National Internal Revenue Code of 1997 in relation to Article 183 of the Revised Penal Code, committed as follows;

> That during the taxable year 1998, or anytime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while required under the National Internal Revenue Code of 1997 and its pertinent rules and regulations to pay tax, make a return, keep any record or supply the correct and accurate information relative thereto, willfully, unlawfully and feloniously failed to pay the correct amount of income tax liability or supply the correct information by filing a false or fraudulent Income Tax Return (ITR) for the taxable year of 1998, where he purposely and maliciously declared that the income received for the taxable year was only P9,247,410.40 when in truth and in fact the accurate amount of income received was P14,057,704, thereby defrauding and causing damage and prejudice to the government in the amount of P4,810,294.17 inclusive of civil penalties
>
> CONTRARY TO LAW."

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

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**CRIMINAL CASE No. O-111 for Violation of Sec. 257 (B) of the NIRC of 1997**

**INFORMATION**

"The undersigned Acting Prosecutor of Manila hereby accuses **ELISEO CO** of the criminal offense of violation of Section 257, paragraph B of the National Internal Revenue Code of 1997, committed as follows;

That during the taxable year 1998, or anytime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **knowingly and feloniously made false entries on his book of accounts and records by preparing and submitting before the Bureau of Internal Revenue (BIR) his Income Statement for the taxable year 1998, thereby revealing his undeclared income of P4, 810,294.17** when in truth and in fact , the said income received was not reflected at all in his Income Tax Returns (ITR) for the taxable year of 1998.

CONTRARY TO LAW."

**SEC. 257. Penal Liability for Making False Entries, Records or Reports, or Using Falsified or Fake Accountable Forms. -**

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(B) Any person who:

(1) Not being an independent Certified Public Accountant according to Section 232(B) or a financial officer, examines and audits books of accounts of taxpayers; or

(2) Offers to sign and certify financial statements without audit; or

(3) Offers any taxpayer the use of accounting bookkeeping records for internal revenue purposes not in conformity with the requirements prescribed in this Code or rules and regulations promulgated thereunder; or

(4) Knowingly makes any false entry or enters any false or fictitious name in the books of accounts or record mentioned in the preceding paragraphs; or

(5) Keeps two (2) or more sets of such records or books of accounts; or

(6) In any way commits an act or omission, in violation of the provisions of this Section; or

(7) Fails to keep the books of accounts or records mentioned in Section 232 in a native language, English or Spanish, or to make a true and complete translation as required in Section 234 of this Code, or whose books of accounts or records kept in a native language, English or Spanish, and found to be at material variance with books or records kept by him in another language; or

(8) Willfully attempts in any manner to evade or defeat any tax imposed under this Code, or knowingly uses fake or falsified revenue official receipts, Letters of Authority, certificates authorizing registration, Tax Credit Certificates, Tax Debit Memoranda and other accountable forms shall, upon conviction for each act or omission, be punished by a fine not less than Fifty thousand pesos (P50,000) but not more than One hundred pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than six (6) years. xxx xxx xxx

Evidently, the filing of the instant four (4) consolidated criminal cases against accused center around accused Eliseo Co's alleged unreported income for taxable year 1998 derived from his business activities and dealings with the Bureau of Corrections under the name "Divisoria Dried Fish Center and General Merchandise" as reflected in the Warrant of Register for calendar year 1998 provided by the said Bureau.

For clarity, We summarize the nature of the charges filed against accused in the instant cases, to wit:

- For Violation of Sec. 254 of the NIRC of 1997 entitled "Attempt to Evade or Defeat Tax" or tax evasion, in Criminal Case No. 0-108, accused Eliseo Co allegedly filed with the Bureau of Internal Revenue (BIR), a false and fraudulent **Income Tax Return (ITR) for taxable year 1998,** wherein he allegedly declared therein a lower income in the total amount of P9,247,410.40, derived from his business under the name of "Divisoria Dried Fish Center and General Merchandise", instead of his alleged true income amounting to P14,057,704.57. This allegedly facilitated the commission of tax evasion by willfully suppressing his true and accurate income thereby defrauding and causing damage to the government in the amount of P4,810,294.17.

- For Violation of Sec. 267 of the NIRC of 1997 entitled "Declaration under Penalties of Perjury" in relation to Article 183 of the Revised Penal Code entitled "False Testimony in Other Cases and Perjury in Solemn Affirmation" in Criminal Case No. 0-109 on the ground that accused, allegedly willfully, unlawfully, feloniously and knowingly made untruthful statements or falsehood upon material matter required by the NIRC of 1997 in his submitted verified **Income Tax Return(s) for taxable year 1998**, which thus makes him liable for the crime of Perjury. Notably, the essential element for violation of Section 267 of the NIRC of 1997 and Article 183 of the RPC, is the willful act of making untruthful declaration, return and other statement required by the NIRC of 1997 which, if not true and correct as to every material matter shall, subject the person punishable to the penalties prescribed for perjury under the Revised Penal Code;

- For Violation of Sec. 255 of the NIRC of 1997 entitled "Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation" in Criminal Case No. 0-110 for accused's alleged willful failure to pay the correct amount of income tax liability or to supply the correct information by filing a false or fraudulent **Income Tax Return (ITR) for the taxable year 1998.**

- For Violation of Section 257 (B) of the NIRC of 1997 entitled " Penal Liability for Making False Entries, Records or Reports, or Using Falsified or Fake Accountable Forms" in Criminal Case No. 0-111, wherein accused allegedly made false entries on his books of accounts and records by preparing and submitting before the BIR his Income Statement for the taxable year 1998, thereby revealing his undeclared income of P4,810,294.17, when in truth and in fact, the said income received was not reflected at all in his **Income Tax Return (ITR) for the taxable year 1998.**

In light of the foregoing summation, it readily appears that the prosecution's theory in charging accused in the instant criminal cases are centered around the allegation that accused, Eliseo Co, willfully, knowingly and feloniously declared in his **Income Tax Return for taxable year 1998**, a lower income in the total amount of P9,247,410.40, derived from his business under the name of "Divisoria Dried Fish Center and General Merchandise", instead of his alleged true income amounting to P14,057,704.57, which thereby defrauded and caused damage to the government in the amount of P4,810,294.17. And the prime document that reflects the alleged fraudulent declarations constituting the crime of tax evasion and perjury, is accused's **Income Tax Return for taxable year 1998**.

It therefore becomes imperative for the prosecution to prove the fraud committed by accused in his 1998 Income Tax Return or ITR. This could be done by comparing the amount of income declared in the ITR and the amount of income that the Bureau of Internal Revenue (BIR) may come up after reviewing pertinent records of the taxpayer-accused's such books of accounts, invoices and other similar materials. As mentioned earlier, the ITR is the impetus document that will show whether or not accused made a fraudulent declaration of income and the basis for the much needed comparison.

As correctly pointed out by accused in his Demurrer to Evidence, and as reflected in this Court's Resolution dated January 12, 2011[4], the ITR of accused for taxable year 1998 which was formally offered in evidence as Exhibit "G" by the prosecution, was not admitted by the Court for failure to present the original thereof for comparison. Hence, as the cases stand now, there is no admissible copy of accused's 1998 ITR submitted in these consolidated criminal cases which would allow the Court to make a full determination of the guilt of accused beyond reasonable doubt.

Arguably, direct evidence is not the sole means of proving the commission of a crime. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and

[4] Docket, Volume 2, p. 629

principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence.[5]

Circumstantial evidence has been defined as such evidence which goes to prove a fact or series of facts, other than the facts in issue, which, if proved, may tend by inference to establish the fact in issue. But for circumstantial evidence to be sufficient for a conviction, the following requisites must be present, namely: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime.[6]

However, a careful review of the other pieces of evidence presented by the prosecution shows that these too are insufficient to show that indeed the alleged tax evasion or under-declaration of income was committed. We take note that the prosecution's admitted documentary evidence consist of the following:

| | **Description** | **Purpose** |
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| Exhibit "B" | Judicial Affidavit of revenue officer Gilberto C. Ramos, Ruby Ann B. Oradia, Ma Theresa V. Carillo under Group Supervisor Avia B. Globasa dated May 12, 2005 | To prove that the revenue officers executed a joint-affidavit of complaint against Mr. Eliseo Co containing the result of their investigation and the facts constituting the elements of the offense violated |
| Exhibit "C" | Letter of Authority No. 0009132 dated September 17, 1999 | To prove that a Letter of Authority was duly issued by then Commissioner of Internal Revenue authorizing the examination of the books of accounts and accounting records of Spouses Co to determine their tax liabilities for taxable year 1994 to 1998 |
| Exhibit "D" | Second Request for the production of the books of accounts and other | To prove that after the service of the Letter of Authority, a second request for the production of books of |

[5] Amora vs. People, G.R. No. 154466, January 28, 2008, 542 SCRA 485, 491.
[6] *Id.*

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| | accounting records | account and other accounting records was issued to the spouses |
| Exhibit "E" | Final Request for the production of the books of account and other accounting records | To prove that a third and final request for the production of books of account and other accounting record was against the spouses |
| Exhibit "K" | Letter from Director Pedro Sistoza of the Bureau of Corrections | To prove that Director Sistoza of the Bureau of Corrections wrote a letter addressed to the Commissioner of Internal Revenue furnishing the BIR with copies of the Warrant Register from the Bureau of Corrections which is attached to the said letter |
| Exhibits "L", "L-1" to "L-33" | Certified true copies of the Warrant of Register from the Bureau of Corrections for the year 1998 | To prove that Mr. Eliseo Co collected a total amount of P14,057,704.57 from the Bureau of Corrections for taxable year 1998 |
| Exhibit "O" | Summary of Warrant Register issued to Divisoria Dried Fish Market and General Merchandise | To prove that a summary of the total warrant register issued to Divisoria Dried Fish Center and General Merchandise show that the total amount received by Mr. Eliseo Co for year 1998 amounted to P14,057,704.57 |
| Exhibit "P" | Memorandum Report dated May 11, 2005 | To prove that Revenue Officer Gilberto C. Ramos, Ruby Ann B. Oradia, Ma Theresa V. Carillo under Group Supervisor Avia B. Globasa, prepared a Memorandum Repoprt of their findings and recommended the filing of criminal case against Mr. Eliseo Co. |
| Exhibit "R" | Computation of the tax deficiency including surcharges and penalties prepared by Gilberto Ramos | To prove and show that the total amount of tax deficiency, inclusive of surcharges and penalties of Mr. Eliseo Co for taxable year 1998 amounted to P4,429,474.00 |

In evaluating the above pieces of evidence, the conclusions that can be derived therefrom are : the BIR requested accused Eliseo Co to produce his books of account, that he received certain amounts from the Bureau of Corrections, and that the BIR computed his tax deficiencies. But then, none of the said pieces of evidence can show or indicate that, indeed, accused Eliseo Co recorded a different amount of income in his Income Tax Return, which constitutes the very core of the offenses charged against accused.

The prosecution argues that the contents of the ITR can be proven by the testimonies of its witnesses. However, testimonial evidence without admissible documents to corroborate the same, is not enough. Let it be noted that these cases are criminal cases, and the liberty and property of the accused are at stake. Likewise, it is a basic rule of evidence that between documentary and oral evidence, the former carries more weight[7]. Thus, in the case of *Government Services Insurance System vs. Court of Appeals*[8], the Supreme Court ruled:

> "Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, documentary evidence prevails over testimonial evidence."

Furthermore, the Income Tax Return is a document that is submitted and filed with a public, government office, specifically, the Bureau of Internal Revenue, making it therefore, a part of the public record. In case the original document thereof is not available, the applicable rule is that the contents thereof may only be proven by a certified copy issued by the public officer in custody thereof as provided under Section 7 of Rule 130 of the Revised Rules of Court, which reads:

> **SEC. 7. *Evidence admissible when original document is a public record.*** – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

In the instant criminal cases, the prosecution failed to present the original or certified copy of the 1998 ITR issued by the public officer in custody thereof in lieu of the original copy. This was the very reason why admission of the prosecution's Exhibit "G", the purported 1998 ITR of accused, was denied by the Court.

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[7] Yap vs. Inopiquez, A.M. No. MTJ-02-1431. May 9, 2003.
[8] G.R. No. L-52080, May 28, 1993.

Although an "Omnibus Motion" [9] was filed by the prosecution on February 1, 2011 by registered mail and received by this Court on February 18, 2011 seeking a reconsideration of the said denial as the original thereof could no longer be produced or retrieved as the same had been disposed, the Court nevertheless denied admission of said Exhibit "G" in the Resolution dated May 23, 2011[10]. The same reason was cited by the Court : for failure of the prosecution to submit the original and to identify the same.

Lastly, We likewise agree with the claim of the defense that the prosecution failed, in the course of the presentation of the prosecution's evidence, to have a competent witness positively identify accused, Eliseo Co, as the same person charged in the Informations in these criminal cases, and as the person who committed the offenses charged in these criminal cases.

In fact during arraignment of accused on December 7, 2009, the burden of proving that accused Eliseo Co is the person listed in the Informations was specifically pointed out by the Court, and We quote:

ATTY. BULAONG:

> Your Honors, we will be proceeding the arraignment, however, can we proceed with the arraignment if they do not admit that the person Accused is the one will be the one who will be arraigned.

ATTY. PADILLA:

> As listed in the Information.

ATTY. BULAONG:

> As listed in the Information.

JUSTICE CASTANEDA:

> They deny that he is the person listed in the Information, it will be your burden of proof that he is the same.

NO

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[9] Docket, Volume 2, p. 638
[10] Ibid, pp. 681-685

ATTY. BULAONG:

Yes, your Honors."[11]

During trial however, the oral testimonies of the prosecution's witnesses is wanting as regards the positive identification of accused as the person responsible for the commission of the crimes charged herein. Failing in this regard, the demurrer to evidence must be granted.

As provided in our Constitution, specifically, Article 3, Section 14(2), in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. Given this presumption, it is incumbent upon the prosecution to prove the identity of the accused, as well as his guilt beyond reasonable doubt. This presumption prevails unless overturned by competent and credible evidence. And in the absence thereof, the accused is entitled to an acquittal because the evidence presented in these consolidated criminal cases do not fulfill the test of moral certainty to support a judgment of conviction. Consequently, accused cannot be held civilly liable for the alleged deficiency taxes therein.

**WHEREFORE,** premises considered, accused's **DEMURRER TO EVIDENCE** is hereby **GRANTED.** Accordingly, the Criminal Cases Nos. 0-108; 0-109; 0-110 and 0-111 are hereby **DISMISSED** for insufficiency of evidence. Consequently, accused is hereby **ACQUITTED.**

**SO ORDERED.**

**ERLINDA P. UY**
**Associate Justice**

WE CONCUR:

**ERNESTO D. ACOSTA**
**Presiding Justice**

**ESPERANZA R. FABON-VICTORINO**
**Associate Justice**

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[11] TSN, Hearing of December 7, 2009, p. 6.