REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	C.T.A. CRIM. CASE NO. O-171
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS-LIBAN, JJ.
RICHARD C. SANTOS INSTANTANEOUS FAST CONSTRUCTION SERVICES (FAST CONSTRUCT), Accused.	Promulgated:
	JUN 10 2015 1:40 p.m.

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DECISION

In the Information dated January 13, 2008, accused **RICHARD C. SANTOS** is indicted for failure to file Income Tax Return and pay the income tax due in the amount of P2,680,999.24 for taxable year 2004, in violation of Section 51 in relation to Section 255 of the NIRC of 1997, as amended, allegedly committed as follows:

> That on or about April 15, 2005 in Quezon City, Philippines and within the jurisdiction of the Honorable Court, the accused RICHARD C. SANTOS the sole proprietor of INSTANTANEOUS FAST CONSTRUCTION SERVICES (FAST CONSTRUCT) and at the time required by law, rules and regulations to file his income tax return for taxable year 2004 and pay the said income tax due in the amount of Two Million Six Hundred Eighty Thousand Nine Hundred Ninety Nine Pesos and Twenty Four Centavos (P2,680,999.24) exclusive of interest,

> surcharges and penalties thereon, did then and there willfully, unlawfully and feloniously fail and refuse file (*sic*) the said income tax return, much less pay the said amount of income tax due for the said taxable year 2004 despite due notice and demand from the BIR Commissioner, in violation of the aforesaid provision of the NIRC.

When arraigned on June 8, 2010, accused, refused to enter any plea, hence, a plea of "NOT GUILTY" was entered in the record in accordance with Section 1(c) of Rule 116 of the Revised Rules of Criminal Procedure.

During the trial, the prosecution presented Ma. Dolores C. Matias, Romeo E. Naranjo, Elizabeth Gracia V. Sacramento, Alex C. Perez, Alberto A. Pio de Roda and Pura S. Niles, all from the Bureau of Internal Revenue (BIR).

Witness Revenue Officer (RO) **Ma. Dolores C. Matias** now assigned at Revenue District Office Pasig, testified that she was priorly with the National Investigation Division (NID) at the BIR National Office. As such, she was authorized to conduct examination of the books of accounts and other related financial documents of taxpayers for internal revenue tax purposes and to report the result of such investigation.

In 2005, she investigated the case of accused Richard C. Santos, the proprietor of Instantaneous Fast Construction Services, Incorporated.

By virtue of a Memorandum of Assignment No. 2005-03-0149[1], their team commenced the investigation against accused and as part thereof, the then Chief of the NID of the BIR issued Access to Records letters to Construction Industry Authority of the Philippines (CIAP)[2], requesting for data, documents and other information pertaining to accused. The CIAP and Philippine Contractors Accreditation Board (PCAB) submitted the General Information Sheet of

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[1] Exhibit "KK".
[2] Exhibits "J" and "N".

accused which indicated that Instantaneous Fast Construct Services is in Makati City[3], the Company's Balance Sheet[4], Application for Contractor's License[5] filed by accused, DTI Certificate of Registration of business name[6] and Certificate of Deposit[7].

Similar Access to Records Letters were also issued to Olympia Housing[8], Systems Access, Incorporated[9] and Containerboard and Packaging Company, Inc., which as well provided documents containing information about the different construction projects undertaken by Instantaneous Fast Construct Services.

This was followed by requests for the Income Tax Returns (ITRs) of accused from different BIR revenue district offices (RDO) exercising jurisdiction over the business of accused for tax purposes, namely: RDO Makati, RDO Cubao, RDO Quezon City South and from the Information System Operation Service. However, the named RDOs only issued Certifications[10] that accused did not file any ITR and other returns pertaining to his business.

Witness Matias also declared in her Judicial Affidavit[11] that Nova Fusion, Olympia Housing, Inc., Systems Access (Phils.), Inc. and Containerboard and Packaging Company, Inc. provided them with several documents, such as official receipts[12], debit memos, cash/check vouchers[13], progressive billings[14] and deposit slips[15] showing that accused received substantial income from his construction projects in 2004.

From the data gathered, a Summary of Verified Sales/Revenue of Instantaneous Fast Construct for the years

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3 Exhibit "K".
4 Exhibit "K-2".
5 Exhibit "K-3".
6 Exhibit "K-5".
7 Exhibit "K-7".
8 Exhibit "P".
9 Exhibit "O".
10 Exhibits "W" to "W-1", "X" to "X-1", "Y" to "Y-1 and "Z" to "Z-1".
11 Exhibit "EEE" and "EEE-1".
12 Exhibits "LL", "MM", "OO", "PP", "QQ", "RR", "SS", "TT", "WW", "WW-1", "XX", "AAA", "AAA-1" and "BBB".
13 Exhibits "UU", "UU-2", "UU-4", "VV" and "VV-2".
14 Exhibits "MM-1", "OO-1", "PP-1", "QQ-1" and "RR-1".
15 Exhibits "UU-1", "UU-3", "UU-5", "VV-1" and "VV-3".

2002 to 2004[16] was prepared. However, since accused neither filed any return nor paid any tax from 2001 to 2004, the investigating team prepared two memoranda requesting for the issuance of a Letter of Authority and recommending the filing of a criminal action against accused[17].

On May 11, 2006, then Commissioner Jose Mario C. Buñag issued Letter of Authority (LOA) No. 2001 00025944[18], which was served with the request for presentation of books of accounts and other accounting records at the office of accused and received by his secretary Marivic Nono. However, accused ignored this First as well as the Second Request for Presentation of Records dated June 5, 2006[19], hence, a Final Notice dated July 14, 2006[20] was issued.

Subsequently, the BIR issued a Subpoena Duces Tecum to accused Richard Santos/Fast Construct Services dated October 25, 2006[21], for production of documents. In his reply[22] dated December 4, 2006, accused stated that he would not submit any document in relation to their investigation on ground of self-incrimination.

Thereafter, the BIR through its Prosecution Division filed with the Quezon City Prosecutor Office a criminal complaint against accused for violation of Section 5(C) in relation to Section 266 of the NIRC of 1997, docketed as I.S. No. 07-4179. A Memorandum of Preliminary Investigation was later issued by the Prosecutor's Office[23].

In her Supplemental Judicial Affidavit[24], witness Matias added that after the criminal complaint was filed, the team received a Memorandum dated April 30, 2007[25] from Assistant Commissioner, Legal Service, BIR National Office, directing them to make an assessment of accused' tax

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[16] Exhibits "V" to "V-2".
[17] Exhibit "C".
[18] Exhibits "D" to "D-2".
[19] Exhibit "E".
[20] Exhibit "F".
[21] Exhibit "G" to "G-2".
[22] Exhibit "H".
[23] Exhibit "GGG".
[24] Exhibits "OOO' and "OOO=1".
[25] Exhibit "HHH".

liability based on the best evidence obtainable. Thus, the investigating team sent the following Access to Record Letters (ARL-PI) to the following: 1) ARL-PI No. 3566-2006 dated August 25, 2006 to Ms. Lilia Guillermo, Deputy Commissioner of Information System Group, copy furnished Teresita C. Solomon[26], Head of Revenue Data Center-Central Luzon; 2) ARL-PI No. 3856-2006 dated September 20, 2006 to Ms. Lilia Guillermo, copy furnished Melisa Bernal[27], Head of Revenue Data Center-Southern Luzon; and 3) ARL-PI No. 3855-2006 dated September 20, 2006 to Lilia Guillermo, copy furnished Soliman Dabocol[28], Head of ISOS Data Center.

In response, they received the following letters: 1) letter dated September 5, 2006 from Teresita C. Solomon stating that there are no records of accused Richard C. Santos with TIN No. 148-913-203 for taxable years 2001 to 2004, with attached print-out copies of the Records in Collections and Bank Reconciliation (CBR) and Returns and Processing (RPS) extracted from the ITS database[29]; 2) letter-reply of Ma. Erna M. Carteciano, OIC Head of Revenue Data Center of Southern Luzon indicating that accused is registered with the ITS database under RDO No. 49 but with business name RCS-RACE Fans Motor Events Pro with address at 252 Sen. Gil Puyat Avenue, Makati City, with attached extracted print-outs from ITS database[30]; and 3) letter from Soliman Dabocol dated October 2, 2006 saying that no record is found in relation to accused' with TIN No. 148-913-203 for taxable years 2001 to 2004, with attached extracted certified print-out copies of the Records in Collections and Bank Reconciliation (CBR) and Returns and Processing (RPS) extracted from the ITS database[31].

At their instance, Josephine S. Virtucio, Chief of Assessment Division[32] of Revenue Region No. 7, RDO No. 49 of North Makati, issued a Certification dated September 11, 2006 certifying that as of even date, no tax returns and/or tax case of accused with TIN 148-913-203 for taxable years

[26] Exhibit "AA".
[27] Exhibit "CC".
[28] Exhibit "GG".
[29] Exhibits "BB" to "BB-1".
[30] Exhibits "DD" to "DD-1".
[31] Exhibits "HH" to "HH-1".
[32] Exhibit "II".

2001 to 2004 have been forwarded to their office or in their custody, and that the registered address of accused is No. 252 Gen. Gil Puyat Avenue, Makati City. Elizabeth Gracia V. Sacramento of RDO No. 49 also issued a Certification dated September 6, 2006[33] stating that accused registered his business with the district only on May 15, 2006 and that they have not received any Annual ITR from him. However, based on the Certification dated April 19, 2005 issued by the Business Permits Office of the City of Makati[34], Instantaneous Fast Construct owned by accused had secured business permit and license since October 2004.

From the documents and data[35] gathered from the clients of accused, his total income tax due for taxable years 2001 to 2004 amounted to P4,475,928.23, inclusive of the basic income tax liability of P2,680,999.24 and fifty percent (50%) surcharge and interests.

Despite notice for an informal conference, accused failed to appear. Hence, a Preliminary Assessment Notice (PAN) with Details of Discrepancies[36] was issued assessing him of deficiency basic income of P2,690,99924, 50% surcharge of P1,340,499.62 and interest of P3,163,59.10 or a total of P7,185,077.96.

On cross-examination, witness Matias admitted that prior to the issuance of the LOA, the team already conducted a preliminary investigation against accused based on a Complaint Letter by a certain corporation. They collated information, data and documents from third parties, such as, different Government Agencies, BIR Regional and District offices and certain corporations which had business dealings with accused. The issuance of the LOA was only a result of a routine procedure to pursue the civil liabilities of the taxpayer.

On May 19, 2006, she, ROs Annabele Torio and Albino Guyala executed a Joint Complaint-Affidavit which they affirmed before State Prosecutor Stewart Allan A. Mario. Later, they submitted a Memorandum on their investigation

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[33] Exhibit "JJ".
[34] Exhibit "M".
[35] Exhibits "III', "JJJ", "KKK", "LLL" and "MMM".
[36] Exhibits "NNN" and "NNN-1".

report which ushered the issuance of a Letter-Referral dated May 17, 2006[37] by OIC-Commissioner Lilian B. Hefti for the filing a criminal case against accused with the Department of Justice (DOJ).

Witness Matias explained that the PAN was belatedly issued as they had to observe certain procedures, the last of which was the issuance by the Legal Division of the Memorandum requiring the assessment of accused. Besides, at that time, she was already transferred to Pasig.

RO **Romeo E. Naranjo**, now with RDO 84 Tagbilaran City, testified that in 2006, he was assigned as Revenue District Officer at RDO 40 Cubao, Quezon City. He issued a Certification[38] stating that based from the records, no income tax return was filed in his district by a certain Richard Santos.

Witness **Elizabeth Gracia V. Sacramento,** currently the Assistant Chief of the Document Processing Section, RDO 52, Parañaque City, declared that in 2005, she was assigned as the Chief of the Document Processing Section at RDO 49. She issued a Certification[39] stating that Instantaneous Fast Construction Services owned by one Richard C. Santos with T.I.N. 91820300 and address at Unit 103 Ayala Building, Sen. Gil Puyat, Makati City had registered its business with the District only on May 15, 2006 and the copies of the Annual Income Tax Returns attached to the Memorandum of Atty. Carmel Uballa filed by the said taxpayer for 2004 were not received by the office as of the issuance of the Certification.

Witness, **Mr. Alex C. Perez** testified that in 2005, he was assigned at RDO 39 South, Quezon City as the Chief of the Data Processing Section in 2005. He also issued a Certification[40] to the effect that Instantaneous Fast Construction Services and/or Richard C. Santos of 1781 E. Rodriguez Avenue, Quezon City, has no record of Returns filed with RDO 39, Quezon City for the period 2000 to 2004, per verification from the BIR Integrated System.

[37] Exhibit "A".
[38] Exhibits "X" to "X-1".
[39] Exhibits "Z" and "Z-1".
[40] Exhibits "W" and "W-1".

BIR Assistant Commissioner **Mr. Alberto A. Pio de Roda** of the Information System Operation Service testified that one of his duties is to certify the presence or absence of the tax returns in the BIR's data bases. In 2005, the Division Chief of the BIR NID requested him to certify the tax returns of accused and his firm. In the Certification prepared on May 31, 2005[41], he indicated that after verification, no record of tax returns filed under the name of the two alleged taxpayers.

Witness **Pura Niles,** the Chief of the Taxpayers Service Section at RDO No. 34, Paco, alleged that in 2006, she was assigned as the chief of Taxpayers Service Section at RDO No. 40, Cubao. At the instance of BIR NID, she issued a Certification[42] indicating that accused or his business was neither registered with RDO No. 40, Cubao nor has any record in their ITS system.

With the admission of its exhibits[43], the prosecution rested its case.

On November 24, 2011, accused, with leave of Court[44], filed a Demurrer to Evidence[45], to which the prosecution registered an Opposition.[46] On February 22, 2012[47], the Court denied the said Demurrer to Evidence, for lack of merit. Accused assailed the Court's ruling in a Motion for Reconsideration which was denied in the Resolution dated April 26, 2012.[48]

On May 18, 2012, accused filed a Petition for Review before the Court *En Banc* to reverse and set aside the Resolutions of February 22, 2012 and April 26, 2012 and to dismiss the case against him for lack of probable cause.

In the Decision promulgated on October 16, 2013, the Court *En Banc* dismissed the Petition for Review filed by

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[41] Exhibit "DDD".
[42] Exhibits "Y" and "Y-1".
[43] Docket, vol. 1, pp. 530-531.
[44] Docket, vol. 1, pp. 549-550.
[45] Docket, vol. 1, pp. 553-580.
[46] Docket, vol. 1, pp. 593-631.
[47] Docket, vol. 1, pp. 634-651.
[48] Docket, vol. 1, pp. 693-698.

accused on the ground that the Resolutions denying his Demurer to Evidence are interlocutory, hence, not appealable.

During the hearing on November 20, 2013, the Court, at the instance of the prosecution, deemed the presentation of further evidence by accused waived. This was confirmed in the Resolution of November 28, 2013. However, the ruling was reversed at instance of accused in the Resolution of January 15, 2014, consequently, accused was allowed to present evidence in support of his defense.

In his Judicial Affidavit[49], accused **Richard C. Santos** claimed that contrary to the accusation against him, he filed his Income Tax Return (ITR) and paid the corresponding tax due for the year 2004 on April 15, 2005[50]. It was received by BIR RDO No. 41, Mandaluyong City on April 25, 2014. However, indicated in the said ITR was the address of his business Fast Construct Services at No. 252 Senator Gil Puyat, Makati City which he used when he registered it as sole proprietorship in the 1990s. He explained that after his marriage in 2001, he transferred residence to No. 379 Florida St., East Greenhills, Mandaluyong City, where he also conducted business from 2001 to 2005. Nevertheless, all communications and correspondences were sent to his Makati address at No. 252 Sen. Gil Puyat, Makati City.

Accused further declared that his other tax returns and attached documents, to wit: his ITRs for 2002[51] and 2003[52], the original copies of the Report of Independent CPA dated April 14, 2003[53] and April 11, 2004[54], his Balance Sheet for 2002[55] and Comparative Income Statement for 2003[56] were also filed in Mandaluyong City since it was his actual residence. The same with his monthly Value Added Tax (VAT) Declarations for the years 2002[57], 2003[58] and 2004[59]

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[49] Exhibit "28".
[50] Exhibits "5" to "5-c".
[51] Exhibit "13".
[52] Exhibit "16".
[53] Exhibit "14".
[54] Exhibit "17".
[55] Exhibit "15".
[56] Exhibit "18".
[57] Exhibit "19".
[58] Exhibit "20".
[59] Exhibit "21".

which however indicated No. 379 Florida St., East Greenhills, Mandaluyong City as his address.

As to his Sales Receipt of P17,104,945.80 and cost of sales/services of P13,230,709.35 appearing in his 2004 ITR, the said amounts were arrived at after proper accounting and audit procedures with validation by the ICPA, as shown in the ICPA Report dated April 13, 2005[60], Comparative Balance Sheet for December 31, 2003 and 2004[61] and Comparative Income Statement for 2003 and 2004, all attached to his 2004 ITR filed with the BIR Mandaluyong City.

Accused further claimed that he deemed his tax due per his 2004 ITR in the amount of P122,570.75 paid by virtue of the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) issued by his clients in 2004. The said Certificates of Creditable Tax Withheld at Source with the total amount of P204,241.00 came from PLDT for the period January 1, 2004 to March 31, 2004 in the amount of P11,000.00[62]; System Access (Philippines) Inc. for the period April 1 to June 30, 2004 in the amount of P27,272.70[63]; Containerboard and Packaging Co., Inc. for the period July 1 to September 30, 2004 in the amount of P165,968.00[64], which were all attached to his 2004 ITR filed with the BIR, Mandaluyong City. In computing his tax liability for the taxable year 2004, he deducted the sum of amounts indicated in the three (3) Certificates of Creditable Tax Withheld at Source from the tax due (P122,570.00 - P204,241.00) and arrived at the negative amount of (P117,670.00) for the year 2004.

According to accused, the amounts stated in the PAN are neither correct nor backed-up by receipts and invoices from his construction firm, while the figures reflected in his 2004 ITR, which remained undisputed, were based on the audit made by the ICPA who examined his financial records. However, since the BIR did not come to his office to examine his books of accounts as authorized in the LOA dated May

[60] Exhibit "6".
[61] Exhibit "7".
[62] Exhibit "9".
[63] Exhibit "11".
[64] Exhibit "12".

11, 2006[65], he was not able to submit the expenditure and sales record of Instantaneous Fast Construction Services. On May 17, 2006, without any notice, the three (3) BIR Officers named in the LOA executed a Complaint-Affidavit[66] for his alleged violations of the NIRC and filed it with the DOJ for preliminary investigation[67].

Accused admitted that despite receipt of the Second Request for Presentation of Records dated June 5, 2006, no representatives from the BIR came to his office to inspect his books of account. Thus, upon his instruction, his accountant Marivic Nono submitted the required documents to the BIR in several tranches. Still the BIR failed to furnish him with the result of their examination. Subsequently, he received a Final Notice dated July 14, 2006[68] but he was still in the dark as regard the criminal complaint filed against him with the DOJ. Subsequently, he received a Subpoena with the copy of the Complaint from State Prosecutor Merba Waga. As directed, he filed a Counter-Affidavit on August 24, 2006[69], attaching thereto his ITRs for the years 2002, 2003 and 2004.

Thereafter, RO Matias informed him that his ITRs were referred by Mr. Arnel Guballa to the RDO of BIR Mandaluyong City for confirmation[70]. In response, the BIR Mandaluyong Office, through RDO Isidro T. Casals, Jr.[71], issued a Memorandum dated September 12, 2006 and a Certification, through Lolita P. Castro, the Chief of the Document Processing Section, confirming that he filed his ITRs for taxable years 2002, 2003 and 2004[72].

Sometime in November 2006, he received a *Subpoena Duces Tecum* from BIR Assistant Commissioner James Roldan requesting his appearance on November 27, 2006 for investigation. Believing that he was facing two (2) separate investigations pertaining to the same documents from his business, he sent a letter dated December 4, 2006 invoking

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65 Exhibit "1".
66 Exhibit "22".
67 Exhibit "23".
68 Exhibit "4".
69 Exhibits "24" to "24-e".
70 Exhibit "25".
71 Exhibit "26".
72 Exhibit "27".

his right against self-incrimination as a preliminary investigation on the same matter was still pending before the DOJ.

Accused also volunteered the existence of a pending case against him with RTC-Quezon City, Branch 95 for alleged failure to file an ITR for taxable year 2003 where witness Dolores Matias admitted having seen the cited Certification issued by RDO, Mandaluyong City.

Accused claimed that the documents he submitted to the BIR in connection with LOA dated May 11, 2006 were not adduced or formally offered in evidence by prosecution. Besides, all the Access Letter to Records issued by the BIR on various dates to its clients, namely, System Access (Phil), Inc. on October 10, 2005[73]; Olympia Housing Inc. on October 10, 2005; and Containerboard & Packaging Inc. on May 25, 2005; were procured in 2005 or before the issuance of the LOA on May 11, 2006.

During cross-examination, accused stated that Instantaneous Fast Construct Services started operation in 1993 with registered business address at No. 252 Sen. Gil Puyat St., Makati City. Although his ITRs for 2004, 2003 and 2002 indicated RDO No. 49 as RDO Code and his registered address as 252 Sen. Gil Puyat St., Makati City, they were all filed with RDO No. 41, in Mandaluyong City where he resided. In any event, it was his accountant who filed his 2002 to 2004 ITRs in Mandaluyong City, thus none was filed with RDO, Makati.

Accused maintained that he presented his ITRs for 2002 to 2004 complete with the Financial Statement prepared by the ICPA during the preliminary investigation in the DOJ but he could no longer recall the attachments.

Further, he used his own TIN 148913203 as the registered TIN of Instantaneous Fast Construction Services since its a sole proprietorship, thus, they are one and the same. His business is likewise registered with the Department of Trade and Industry (DTI) with registered

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[73] Exhibit "O".,

business address in Quezon City since at the time of registration in 1993 until August 18, 2001, he was staying in his mother's house in Quezon City. Only after his marriage that he transferred residence to Mandaluyong City and had since been filing his tax returns in the said place until 2007. In the interim, he continued to conduct business in Makati City, specifically at No. 252 Sen. Gil Puyat St. because his father owned the building where he also held office for another company.

Defense witness **Silverio S. Ibay Jr.**, the Head of SPEND Management Accounting of PLDT, testified that as part of disbursement management, his department is in-charge of passing on the accounting entries in the books and whatever amount that is being withheld. He also deals with the preparation and issuance of the related certificate of withholding tax at source for PLDT suppliers and contractors such as accused.

As PLDT's authorized agent, he issued a Certificate of Creditable Tax Withheld at Source to accused indicating that for the 3rd quarter of 2004, PLDT paid him the amount of P1,100,000.00 with tax withheld at source amounting to P11,000.00 or 1% of the total receipt for the period January 1 to March 31, 2004. This amount was remitted to the BIR on the month it was withheld.

He was not aware of the nature of payment by PLDT to accused since the form indicated only that it was for income tax payment made by one of the top 5000 corporations to their local supplier of goods. Thus, the payment was for purchase of goods.

On February 26, 2014, defense counsel manifested that despite diligent efforts, the presence of other defense witness could not be secured thus he was constrained to rest his case.

On June 9, 2014, the case was deemed submitted for decision after the parties filed their respective memoranda[74].

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[74] Plaintiff's Memorandum filed on May 27, 2014, docket, vol. 2, pp. 1171-1216; Memorandum for the Defense, docket, vol. 2, pp. 1218-1241.

THE ISSUE

The Court is confronted with the lone issue of:

> "Whether accused Richard C. Santos and Instantaneous Fast Construction Services (FAST CONSTRUCT) are criminally and civilly liable of the crime charged in the Information"

THE RULING OF THE COURT

It is basic rule in evidence that the burden of proof lies on the party who makes the allegations – *et incumbit probation, qui dicit, non qui negat; cum per rerum naturam factum negantis probation nulla sit* (The proof lies upon him who affirms, not upon him who denies since by nature of things, he who denies a fact cannot produce any proof).[75]

In other words, the prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction.[76] It is therefore necessary that the evidence of the prosecution must be strong *per se* to pierce that shield of presumptive innocence and establish the guilt of the accused beyond a reasonable doubt.[77]

Proof beyond reasonable doubt is a burden particular to the prosecution and does not apply to exculpatory facts as may be raised by the defense; accused is not required to establish matters in mitigation or defense beyond reasonable doubt.[78]

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[75] *Ching v. Nicdao*,522 SCRA 316.
[76] *Rollie Calimutan vs. People of the Philippines, et al.*, G.R. No. 152133, February 9, 2006.
[77] *People of the Philippines vs. Court of First Instance of Rizal, Branch IV, Quezon City presided over by The Hon. Ricardo P. Tensuan, and Victorino Robillos*, 161 SCRA 249.
[78] People of the Philippines v. Noel Santos, G.R. No. 127500, June 8, 2000.

Under the Information, accused is charged for alleged non-filing of Income Tax Return and non-payment of the corresponding tax due for the income received for services rendered by his firm Instantaneous Fast Construction Services to his various clients for taxable year 2004.

Section 255 of the NIRC reads as follows:

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

Thus, the prosecution must establish the following elements of the crime charged to justify conviction, to wit:

1. That accused is required under the law, rules and regulations to make or file a return and pay the tax due;

2. That he failed to make or file the return and pay the tax due at the time required by law; and

3. That his failure to make or file the return and pay the corresponding tax due was willful.

<u>Accused is by law required to make or file a return and pay the tax due</u>

The legal obligation of accused to file a tax return is clear from Sections 51 and 74 of the NIRC, as amended, the pertinent portions of which read as follows:

> 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 xxx xxx"
>
> "SEC. 74. Declaration of Income Tax for Individuals. —
>
> (A) In General. — Except as otherwise provided in this Section, **every individual subject to income tax** under Sections 24 and 25(A) of this Title, **who is receiving self-employment income**, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, **shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year**. In general, **self-employment income consists of the earnings derived by the individual from** the practice of profession or **conduct of trade or business carried on by him as a sole proprietor** or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance,

upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner." (emphasis supplied)

Corollary to the foregoing, accused also has the corresponding obligation to pay the correct tax due for income received in the conduct of his business during the taxable year 2004. Pertinent provisions on the matter are found in Section 57(B) of the NIRC of 1997, as amended, in relation to Section 2.57(B) of Revenue Regulations No. 2-98, dated April17, 1998, which provide, as follows:

"SEC. 57. Withholding of Tax at Source. —

(A) xxx xxx xxx

(B) Withholding of Creditable Tax at Source. — The [Secretary] may, upon the recommendation of the [CIR], require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year."

"SECTION 2.57. *Withholding of Tax at Source*

xxx xxx xxx

(B) *Creditable Withholding Tax.* - Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as

> amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income. Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature."

It is undisputed that accused Richard C. Santos is a Filipino citizen residing at No. 379 Florida Street, East Greenhills, Mandaluyong City. He is the sole proprietor of Instantaneous Fast Construction Services and derived income from undertaking construction projects for various clients, namely, PLDT, System Access (Philippines) Inc., Containerboard and Packaging Co., Inc. during the taxable year 2004.[79] He is a registered taxpayer with TIN 148-913-203 which TIN he also used for his firm when he registered it in 1993. From registration until the time he got married in 2001, he conducted business and held office at his father's building located at No. 252 Sen. Gil Puyat Avenue, Makati City.

Thus, accused is a person required by law to make and file a declaration of his estimated income from his business for taxable year 2004 on or before April 15, 2005. This much was established by the prosecution.

Accused did not fail to make and file the return and pay the corresponding income tax due at the time required by law.

To negate the accusation against him and prove his claimed innocence, accused presented his Annual ITR (BIR Form No. 1701) for the taxable year 2004, filed on April 15, 2005[80], with the following figures: Gross Taxable Business/Profession Income – P3,874,236.45; Total Taxable Income - P3,874,236.45; Tax Due - P122,570.73; Creditable Tax Withheld for the First Three Quarters – P204,241.00;

[79] Statement of Facts, docket, vol. I, pp, 382-383.
[80] Exhibit "5" to "5-c".

Total Tax Credits/Payments - P204,241.00; and Tax Payable (Overpayment) - (P117,670.27). Attached to accused' 2004 ITR are the following documents, to wit: Report of Independent Certified Public Accountant dated April 13, 2004 and signed by Ms. Alicia I. Leaño[81]; Instantaneous Fast Construct Services Comparative Balance Sheet for December 31, 2003 & 2004[82]; Instantaneous Fast Construct Services Comparative Income Statement for December 31, 2003 & 2004[83].

Accused likewise presented the Certificates of Creditable Tax Withheld at Source for the year 2004 issued by its clients, specifically, PLDT[84], Systems Access (Philippines), Inc.[85] and Containerboard and Packaging Co., Inc.[86], as follows:

Client/Withholding Agent	**Period**	**Amount of Income Payments**	**Amount of income tax withheld**
Philippine Long Distance Telephone Company	January 1 to March 31, 2004	P1,100,000.00	P11,000.00
Systems Access (Philippines), Inc.	April 1 to June 30, 2004	P1,363,636.38	P27,272.73
Containerboard and Packaging Co., Inc.	July 1 to September 31, 2004	P8,298,400.00	P165,968.00
Total			**P204,240.73**

The prosecution however maintains that accused did not make or file his Annual ITR for 2004 and correspondingly, failed to pay the income tax due him per record verification and certifications secured from different RDOs where accused allegedly conducted business.

In support of its contention, the prosecution presented the following documents to establish the second element of the charge:

[81] Exhibit "6".
[82] Exhibit "7".
[83] Exhibit "8".
[84] Exhibits "9", "9-a", "10" and "10-a".
[85] Exhibit "11".
[86] Exhibit "12".

1) Certification dated May 30, 2005 issued by the Chief of Data Processing Section of RDO No. 39, South Quezon City[87] Alex C. Perez stating that Instantaneous Fast Construction Services and/or accused has no record of returns filed in said office for the period 2000 to 2004 and that based on the BIR-ITS the trade name Instantaneous Fast Construction Services and/or accused is not registered in the system;

2) Certification dated January 4, 2006 issued by Revenue Officer Romeo E. Naranjo of RDO No. 40, Cubao, Quezon City[88], stating that Instantaneous Fast Construction Services and/or accused is not a registered taxpayer of said district and did not file any tax return;

3) Certification dated January 5, 2006 issued by the Head of the Taxpayer Service Section of RDO No. 40, Cubao, Quezon City Pura S. Niles[89], stating that Instantaneous Fast Construction Services and/or accused is not a registered taxpayer of said district but registered as ONETT at RDO No. 48, West Makati;

4) Certification dated April 14, 2005 issued by the Head of Document Processing Section of RDO No. 49, North Makati Elizabeth Gracia V. Sacramento[90], stating that Instantaneous Fast Construction Services and/or accused is not a registered taxpayer of said district and did not file any tax return;

5) Reply Letter of Teresita C. Solomon to Arnel SD. Guballa of the National Investigation Division with attached certified print-out copies of the Records in Collection and Bank Reconciliation and Returns Processing System extracted from ITS database[91], indicating that there are no records found concerning the internal revenue tax payment/information returns for the years 2001 to

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[87] Exhibits "W" to "W-1".
[88] Exhibits "X" to "X-1".
[89] Exhibits "Y" to "Y-1".
[90] Exhibits "Z" to "Z-1".
[91] Exhibits "BB" to "BB-1".

2004 of Instantaneous Fast Construction Services and accused with TIN 148-913-203-000;

6) Reply Letter of the OIC, Head of the Revenue Data Center – Southern Luzon Ma. Erna M. Carteciano[92], saying that accused with TIN 148-913-203-000 is registered in their ITS database under RDO No. 49 with business name RCS_RACE FANS MOTOR EVENTS PRO;

7) Reply Letter of Soliman C. Dabocol with attached certified print-out copies of the Records in Collection and Bank Reconciliation and Returns Processing System extracted from ITS database[93];

8) Certification dated September 11, 2006 issued by the Chief of Assessment Division of Revenue Region No. 7, Quezon City Josephine S. Virtucio[94], certifying that as of even date, no tax returns and/or tax cases of accused with TIN 148-913-203-000 for taxable years 2001 to 2004 has been forwarded or in custody of her division;

9) Certification dated September 6, 2006 issued by the Head of Document Processing Section of RDO No. 49, North Makati Elizabeth Gracia V. Sacramento[95], stating that Instantaneous Fast Construction Services and/or accused registered his business with the district only on May 15, 2006; and

10) Certification dated May 31, 2005 issued by Assistant Commissioner Alberto A. Pio De Roda of the Information Systems Operation Service[96], stating that based on the BIR database, there are no records of returns filed with said office by the accused with TIN 148-913-203-000 or Instantaneous Fast Construction Services for taxable years 1994 to 2005.

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[92] Exhibit "DD".
[93] Exhibits "HH" and "HH-1".
[94] Exhibit "II".
[95] Exhibits "JJ" to "JJ-1".
[96] Exhibit "DDD".

All the foregoing documents however failed to lead to an inference exclusively consistent with the guilt of accused.

Accused admitted that he is registered with RDO No. 49, Makati, since the office of his firm at the time of registration in the 1993 was under the jurisdiction of Makati City. However, he actually resided in the house of his mother in Quezon City from 1993 until August 18, 2001. In the interim, he used his address in Quezon City when he registered his firm with the Department of Trade and Industry (DTI). But after he got married in 2001, he transferred residence to No. 379 Florida St., East Greenhills, Mandaluyong City, which also became his working office. Hence, his annual ITRs for 2002 to 2004 were filed with RDO No. 41 Mandaluyong City. It has been customary to file his ITRs and all other Tax Returns in Mandaluyong City, where he resides. These explain why no returns were filed or payments made with RDO No. 49 in Makati City, where he registered his firm Instantaneous Fast Construction Services.

To counter the prosecution's evidence showing the absence of any record of filing of his 2004 Annual ITR, accused submitted in evidence a Certification dated September 12, 2006 issued by Ms. Lolita P. Castro, the Chief of the Document Processing Section of RDO No. 41, Mandaluyong City[97], stating that per verification in the Returns Processing System (RPS) of the BIR Integrated Tax System (ITS), as of even date, Richard C. Santos with TIN 148-913-203-000 and business address at 252 Sen. Gil Puyat Avenue, Makati City had filed Income Tax Returns (BIR Form 1701) for taxable years 2002-2004.

Accused also presented his 2004 Annual ITR (BIR Form No. 1701) filed on April 15, 2005, evidencing that he filed his ITR at the time required by law. Further, apparent from a plain observation of the Annual ITR for taxable year 2004 vis-à-vis the Certificates of Creditable Tax Withheld at Source issued by PLDT, Systems Access (Philippines), Inc. and Containerboard and Packaging Co., Inc., accused had fully paid his income tax due in the amount of P122,570.00, with an excess of creditable income tax withheld in the amount of P117,670.00 at the end of 2004. A comparison of

[97] Exhibit "27".

accused' ITR and the Certificates of Creditable Tax Withheld at Source issued by his clients shows the amounts of income payments tallied from both said documents, while the total amount of taxes withheld has a difference .27 centavos, due to rounding off.

However, perusal of the ITR filed by accused for 2004, with the attachments disclose that the stamp of the BIR in the said 2004 ITR of accused does not bear the name or initial of the revenue officer who received it. In any event, RO Lolita P. Castro of the Document Processing Section of RDO No. 41, Mandaluyong City certified that accused filed his Annual Income Tax Return (BIR Form 1701) for taxable years 2004 effectively negating the prosecution's contention to the contrary.

Section 51(B) and (C)(1) of NIRC of 1997, as amended, provide that tax return shall be filed with the Revenue District Officer of the city in which such person has **his legal residence or principal place of business**, thus:

> "SEC. 51. *Individual Return.* -
>
> xxx xxx 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."

On the other hand, Revenue Memorandum Circular No. 06-80[98] defines legal residence and principal place of business as follows:

> *Legal residence*. The legal residence of an individual taxpayer is the address where the taxpayer normally resides.
>
> *Principal place of business.* This term shall be understood to mean the place where the main business activity of the taxpayer is conducted.
>
> (a) For individuals practicing their profession, this is the place where his main office is located, and
>
> (b) For employees — the principal place of business is their place of work.

Therefore, accused' filing of his Annual ITR at RDO No. 41 Mandaluyong City is deemed sufficient compliance with the law.

That accused' failure to make or file the return and pay the corresponding tax due was not willful

In the absence of one of the elements of the crime charged, disquisition on the last element is unwarranted.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al.,*[99] ruled that the crime of tax evasion is an integration of three factors, *viz*:

> "Tax evasion connotes the integration of three factors: (1) the end to be achieved, *i.e.,* the payment of less than that known by

[98] Publication of Sections 45(b) and 86 (as amended by Batas Pambansa Blg. 41) and Section 72 (Amended by Batas Pambansa Blg. 37) of the Tax Code, February 14, 1980.
[99] G.R. No. 147188, September 14, 2004, 438 SCRA 290.

> the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful."

It is also elementary that in all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[100]

On the civil aspect of this case, Section 7 (b) (1) of Republic Act No. 9282 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."

The prosecution claims that the government has been deprived of the estimated deficiency income tax in the amount of P2,680,999.24 exclusive of interest, surcharges and penalties due to accused' failure to file his ITR and pay the corresponding income tax for taxable year 2004.

While assessment procedures provided under the NIRC, as amended, need to be satisfied in civil action for collection of the tax, assessment of tax due before institution of criminal action is not necessary. Be that as it may, the final

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[100] *Aurea R. Monteverde vs. People of the Philippines*, G.R. No. 139610, August 12, 2002, 387 SCRA 196, citing *Fernandez vs. People*, G.R . No. 138503, September 28, 2000, 341 SCRA 277.

determination of the Commissioner as to the tax liability accused is necessary for the Court to rule on the civil aspect of the case.

In the instant case, apart from the PAN issued by the BIR for the alleged deficiency income tax and value added tax of accused for taxable year 2004, no other evidence was adduced by the prosecution that would prove his civil liability. Hence, there is no way by which the Court may be able to ascertain the income tax liability of accused.

WHEREFORE, the accused **Richard C. Santos** is hereby **ACQUITTED**, for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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.

ROMAN G. DEL ROSARIO
Presiding Justice