REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

VIRGILIO OCAMPO y IPAPO,
Accused.

CTA CRIM CASE NOS. O-294, O-295, O-373 and O-374

For: Violation of Sections 56(b), Section 106(a) & Section 255 in relation to Section 27 & Section 108, of the 1997 Tax Code.

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
AUG 2 6 2016
9:10 a.m.

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RESOLUTION

For resolution is the *Demurrer to Evidence*[1] filed, without leave of Court, by accused Virgilio Ocampo y Ipapo on May 3, 2016. Plaintiff despite notice, failed to file comment.

Accused is charged for four counts of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) for his alleged failure to file income tax returns for taxable years **2005** (Crim Case No. O-374), **2006** (Crim Case No. O-373), **2007** (Crim Case No. O-294), and **2008** (Crim Case No. O-295).

The accusatory portions of the Informations read as follows:

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[1] Rollo, pp. 1682-1705

CTA Crim Case No. O-294:

"That on or about the 15th day of April, 2008, at Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously did not file a return required by the National Internal Revenue Code of 1997 particularly income tax return for **taxable year 2007** and thereby failed to pay an income tax of **Two Hundred Forty Four Million Seven Hundred Eighteen Thousand Five Hundred Seventeen & 49/100 (P244,718,517.49)** representing his income from his gold sale transaction with the Mint and Refinery Operations Department (MROD) of the Bangko Sentral ng Pilipinas to the damage and prejudice of the government of the afore-stated amount.

Contrary to Section 255 of the National Internal Revenue Code of 1997, as amended."

CTA Crim Case No. O-295:

"That on or about the 15th day of April, 2009, at Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously did not file a return required by the National Internal Revenue Code of 1997 particularly income tax return for **taxable year 2008** and thereby failed to pay an income tax of **Two Hundred Thirty Nine Million Eight Hundred Twenty Seven Thousand Three Hundred Fifteen & 85/100 (P239,827,315.85)** representing his income from his gold sale transaction with the Mint and Refinery Operations Department (MROD) of the Bangko Sentral ng Pilipinas to the damage and prejudice of the government of the afore-stated amount.

Contrary to Section 255 of the National Internal Revenue Code of 1997, as amended."

CTA Crim Case No. O-373:

"That on or about the 15th day of April, 2007, at Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously did not file a return required by the National Internal Revenue Code, particularly his income tax return for taxable year 2006 and thereby failed to pay an income tax in the amount of **Two Hundred Eighteen Million Two Hundred Twenty Seven Thousand Two Hundred Sixty-Six Pesos & 01/100 (P218,227,266.01)** representing his income from his gold sale transaction with the Mint and Refinery Operations Department (MROD) of the Bangko Sentral ng Pilipinas, to the damage and prejudice of the government of the aforestated amount."

<u>CTA Crim Case No. O-374:</u>

"That on or about the 15th day of April, 2006, at Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously did not file a return required by the National Internal Revenue Code, particularly his income tax return for taxable year 2005 and thereby failed to pay an income tax in the amount of **One Hundred One Million Six Hundred Forty Three Thousand One Hundred and Seventy Three Pesos & 24/100** (P101,643,173.24) representing his income from his gold sale transaction with the Mint and Refinery Operations Department (MROD) of the Bangko Sentral ng Pilipinas, to the damage and prejudice of the government of the aforestated amount."

On April 14, 2016, after presentation and formal offer of plaintiff's evidence, the Court resolved[2] as follows:

"xxx, the Court hereby **ADMITS Exhibits "P-1", "P-5", "P-6", "P-162", "P-164", "P-165", "P-166", "P-167", "P-168", "P-169", "P-170", "P-171", "P-172", "P-173", "P-174", "P-175", "P-176", "P-177", "P-178", "P-179", "P-180", "P-181", "P-183", "P-184", "P-185", "P-186", "P-187", "P-188", "P-189", "P-190", "P-191", "P-192", "P-193", "P-194", "P-195", "P-196", "P-197", "P-198", "P-199", "P-200", "P-201", "P-202", "P-203", "P-204", "P-205", "P-206", "P-207", "P-208", "P-209", "P-210", "P-211", "P-212", "P-213", "P-214", "P-215", "P-216", "P-217", "P-218", "P-219", "P-220" "P-221", "P-222", "P-223", "P-224", "P-225", "P-226", "P-227", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-80",**

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[2] Rollo, pp. 1676-1678.

> **"P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96", "P-97", "P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P106", "P-107", "P-108", "P-109", "P-110", "P-111", "P-112", "P-113", "P-114", "P-115", "P-116", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123"** described as "RN No. 54406", **"P-124"** described as "RN No. 54407", **"P-125"** described as "RN No. 54358", **"P-126"** described as "RN No. 54356", **"P-127"** described as "RN No. 54293", **"P-128"** described as "RN No. 54292", **"P-129"** described as "RN No. 54225", **"P-130"** described as "RN No. 54224", **"P-131"** described as "RN No. 54128", **"P-132"** described as "RN No. 54129", **"P-133"** described as "RN No. 54113", **"P-134"** described as "RN No. 54114", **"P-135"** described as "RN No. 54097", **"P-136"** described as "RN No. 54094", **"P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-182-D", "P-182-E", "P-182-F", "P-4", "P-4-A", "P-182-A", "P-9", "P-228", "P-228-A", "P-229", "P-229-A", "P-330", "P-330-A", "P-331", "P-331-A", "P-332", "P-332-A", "P-333", "P-333-A",** subject to the Court's final evaluation and appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case."

In the same Resolution, the Court denied the admission of the following exhibits:

1. **Exhibits "P-143" "P-144", "P-145", "P-146", "P-147", "P-148", "P-149", "P-150", "P-151", "P-152", "P-153", "P-154", "P-155", "P-156", "P-157", "P-158", "P-159", "P-160", "P-161", "P-163", "P-79", "P-123"** described as "Letter of Authorization, Feb-10-2009", **"P-124"** described as "Letter of Authorization, 6-20-07", **"P-125"** described as "Letter of Authorization, Jun-1-2007", **"P-126"** described as "Letter of Authorization, FM-MMKT-005.01 Rev.", **"P-127"** described as "RN No. 060688", **"P-128"** described as "RN No. 060129", **"P-129"** described as "RN No. 059893", **"P-130"** described as "RN No. 059892", **"P-131"** described as "RN No. 058989", **"P-132"** described as "RN No. 058518", **"P-133"** described as "RN No. 058319", **"P-134"** described as "RN No. 058078", **"P-135"** described as "RN No. 058029" and **"P-136"** described as "RN No. 058028", for failure of the exhibits formally offered and identified to correspond with the document actually marked; and

2. **Exhibit P-182** for failure of the exhibit formally offered to correspond with the document actually marked and identified.

On May 3, 2016, the Court received the subject *Demurrer to Evidence*[3] filed by accused, via a private courier. On May 12, 2016, the prosecution was granted ten (10) days from receipt of accused's Demurrer to Evidence to file its comment thereto.

The Records Division reported on June 24, 2016 that the prosecution has not yet filed its comment on accused's Demurrer to Evidence. Hence the accused's *Demurrer to Evidence*[4] is submitted for resolution.

Accused prays of this Court for his acquittal for lack of sufficient evidence. Accused enumerates the defects in the pieces of evidence offered by the prosecution, *to wit*:

(a) Following the issuance of the Memorandum [Exhibit P-5], the BIR officers never bothered to present any report on the results of their findings;

(b) The excerpts of the records of Barangay Pandayan, Meycauayan City, Bulacan [Exhibit P-6] were certified by the Punong Barangay who has no authority to certify such document;

(c) The Letter of Delivery and Sale [Exhibits P10 to P-77, P-157 to P-181, P-183 to P-227] are certified xerox copies not of the originals; it was testified to by witness Erlinda Derramas that she did not have the original when she certified the Letters of Delivery and Sale as these were in the possession of another department, and even if the said sales documents were certified, the signature of accused and the others are still photocopies and were not authenticated;

(d) The tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" [Exhibits P-182-D, P-182-E, and P-182-F] have no basis, incomplete, the signature of Deputy Director Llanes is but mere photocopy in the provisional exhibits, the exhibits actually offered do not bear Llanes'

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[3] Supra, Note 1.
[4] Supra.

signature, and a certain Villafuerte who certified the exhibits was not identified and her signatures were not authenticated. Further the title of these exhibits show "Gold Delivered and Sold", accused appear to be the buyer not the seller;

Specifically, Exhibit P-182-D is undated, prepared by a certain Encina who was not identified as to her duties and functions and the signature of certain Villafuerte who signed the document as "certified photocopy" was not identified and her signature was not authenticated. Exhibit P182-E is undated and was merely noted and not certified by Deputy Director Llanes. Exhibit P-182-F is undated, noted but not certified by Deputy Director Llanes.

(e) The Bureau of Internal Revenue (BIR) examiners did not verify the information they received from the Bangko Sentral ng Pilipinas (BSP) and did not conduct investigation with the BSP or request for records other than those unilaterally given to them. They did not verify the individual sales and only gathered the totals from Exhibits P-182-D, P-182-E, and P-182-F.

(f) The prosecution was not able to connect the Letters of Delivery and Sale with Exhibits P-182-D, P-182-E, and P-182-F. The total weight of gold shown in the Letters of Delivery and Sale do not match those reflected in Exhibits P-182-D, P-182-E, and P-182-F, and the prosecution did not present evidence to show the value of the alleged gold transactions as shown in the Letters of Delivery and Sale. Also, there are no Letters of Delivery and Sale offered as evidence for 2008.

(g) The prosecution failed to prove that it was accused who transacted those gold sales to BSP.

(h) The prosecution failed to produce the originals of the Letters of Delivery and Sale and of Exhibits P-182-D, P-182-E, and P-182-F, and failed to justify the non-production thereof in accordance with the Best Evidence Rule of the Rules of Court.

Demurrer to the 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.[6] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent** or **sufficient** evidence to sustain the indictment or to support a verdict of guilt.[5]

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 according 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.[6]

In the instant criminal cases, accused stands charged with violation of Section 255 of the 1997 NIRC for his failure to make or file his income tax returns (ITR) for taxable years 2005, 2006, 2007 and 2008 for his alleged gold sale transactions with the BSP.

Section 255 of the NIRC of 1997 provides:

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

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[5] *Gutib vs. Court of Appeals, et al.,* G.R. No. 131209, August 13, 1999.
[6] Supra.

To sustain conviction for failure to make or file a return under Section 255 of the 1997 NIRC, the following elements must be established:

1) The accused is a person required to make or file a return;

2) The accused failed to make or file the return at the time required by law; and

3) That failure to make or file the return was willful.

The question now is this: Did the prosecution present sufficient evidence to establish the presence of the above elements of failure to make or file a return under Section 255 of the 1997 NIRC?

The Court rules in the negative.

After a painstaking review and examination of the records of this case, the Court cannot help being drawn to the conclusion that the pieces of evidence adduced against the accused are insufficient to support a verdict of guilt.

First element: *The pieces of evidence are insufficient to establish that accused had the legal obligation to make or file an ITR.*

As regards the first requisite pertinent is the provision Section 51 of the 1997 NIRC, which provides:

"SEC. 51. Individual Return. —

(A) Requirements. —

(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:

(a) Every Filipino citizen residing in the Philippines;

xxx xxx xxx

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

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

xxx xxx xxx."

Plaintiff asserts that for taxable years 2005, 2006, 2007 and 2008 accused earned income from his gold sale transactions with the BSP but failed to make or file his ITR for the said years, and thus, violated Section 255 of the 1997 NIRC. To support its assertion, plaintiff presented and offered Letters of Delivery and Sale [Exhibits P10 to P-77, P-157 to P-181, P-183 to P-227] – documents purporting to show the bar/lot number, pieces and weight of gold sold by accused to the BSP – and tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" [Exhibits P-182-D, P-182-E, and P-182-F] - documents purporting to prove the amount of gold sold by accused to the BSP.

After a thorough examination of the abovementioned Letters of Delivery and Sale and the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" and the rules applicable herein, the Court is constrained not to give evidentiary weight to the purported facts/contents stated therein.

First, the Court could not ascertain the veracity of the purported contents/facts stated in the Letters of Delivery and Sale and the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" as these documents are merely photocopies which were not properly proven in accordance with the rules and/or corroborated by any other evidence.

Under Section 19, Rule 132 of the Rules of Court, there are two classes of documents, public and private documents; the authenticity of a private document must be proved either: (a) by anyone who saw the document executed or written; or

(b) by evidence of the genuineness of the signature or handwriting of the maker.[7] The requirement of authentication does not apply to public documents as they are admissible in evidence even without further proof of their due execution and genuineness.

While a public document does not require the authentication imposed upon private document, there is a necessity for showing to the court that a record of such public document exists. Under the rules, the record of public documents may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record;[8] the attestation must state, in substance, that the copy is a correct copy of the original[9]. A public record of a private document may be proved by the original record or by a copy attested with a certificate that such officer has the custody.[10] Sections 24, 25 and 27, Rule 132 of the Rules of Court read:

> "**Section 24.** *Proof of official record.* — **The record of public documents** referred to in paragraph (a) of Section 19, when admissible for any purpose**, may be evidenced by** an official publication thereof or by a **copy attested by the officer having the legal custody of the record**, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
>
> **Section 25.** *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, **the attestation must state, in substance, that the copy is a correct copy of the original**, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

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[7] Section 20, Rule 132 of the Rules of Court.
[8] Section 24, Rule 132 of the Rules of Court.
[9] Section 25, Rule 132 of the Rules of Court.
[10] Section 27, Rule 132 of the Rules of Court.

> **Section 27.** *Public record of a private document.* — An authorized **public record of a private document may be proved by** the original record, or by a copy thereof, **attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody**." (Emphasis supplied)

The Letters of Delivery and Sale, which may be considered as public record of a private document, were not supported by an attestation that the copies are correct copies of the original, or attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

The Letters of Delivery and Sale, though stamped and signed by witness Erlinda Derramas, were merely certified by said witness as copies of photocopies, and not attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody. As testified to by witness Erlinda Derramas, what she certified is the Xerox copy of the duplicate of the original, and that the original copies were filed with the Accounting Division of the BSP and not in her division, *viz*:

> "ATTY. IFURUNG:
> What was presented were certified Xerox copy not the original. I am asking the original.
>
> ATTY. TORRES:
> They cannot bring the originals, Your Honors.
>
> JUSTICE CASTAÑEDA, JR.:
> Q Why can't you bring the original?
>
> WITNESS:
> A Because the originals were filed in the Accounting Division and what we have here are the MROD and in our operations are central files only.
>
> ATTY. IFURUNG:
> Q So filed with the accounting, it is not with the admin? The original are with the accounting Division?
>
> WITNESS:
> A Yes, sir.
>
> Q And not with your administrative Division?
>
> A Yes, sir.

Q It is not in the Administrative Division, so you do not have the original when you photocopied these documents?

WITNESS:
A We have the central file of the second copy, duplicate.

ATTY. IFURUNG:
Q Central file so that is no longer the original, is that correct?

JUSTICE CASTAÑEDA, JR.:
Q What do you mean by a duplicate. What kind of copy is that?

A Second copy, Your Honor.

Q Is that a duplicate?

A Yes, Your Honors

xxx xxx xxx

ATTY. IFURUNG:
Q. So this is not a Certified True Copy of the original but Certified True Copy of the alleged duplicate?

ATTY. TORRES:
Misleading Your Honors, it is already there.

ATTY. IFURUNG:
No Your Honor, she just answered that it is not the original. The original is in the accounting and another document was photocopied and certified by her.

JUSTICE CASTAÑEDA, JR.:
Q Are you saying, what you have certified is the Xerox copy of the duplicate of the original?

WITNESS:
A Yes, Your Honors.

JUSTICE CASTAÑEDA, JR.:
Ok. Proceed.

ATTY. IFURUNG:
Q Is that your answer ma'am?

A Yes, sir."[11]

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[11] Transcript of Stenographic Notes (TSN) of the Hearing dated October 19, 2015, pp. 15-16.

Even if the Letters of Delivery and Sale were to be considered as private documents, plaintiff still failed to authenticate the same by anyone who saw the document executed or written or by evidence of the genuineness of the signature or handwriting of the maker.

The tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD", which appear to be public documents, were not supported by an attestation that the copies are correct copies of the original, or attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

As regards the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD", what plaintiff offered were copies stamped as "certified photocopy" and signed by a certain Nerissa C. Villafuerte who was never presented as witness, whose identity, duties and functions were never testified by any witness and whose signature was not authenticated, plaintiff failed to establish the authority of said Villafuerte to certify the documents. The tables which were offered in evidence do not bear the signature of Deputy Director Simeona G. Llanes, but were merely stamped with "original signed". And while the said tables were identified and testified to by witness Romeo Q. Madarang, said witness admitted that: he was not involved in the sale of gold transaction itself, and thus would not be in a position to know what transpired;[12] he does not really know if the data in his alleged certification/tables are correct;[13] the subject certification/tables he prepared were based on a certain excel file prepared by somebody else.[14]

Certainly, mere stamping of a document as "certified xerox copy" or "certified photocopy" hardly satisfies the incontrovertible proof required by the Rules of Court to establish the existence of public documents. Also, as discussed above, the purported facts/contents stated therein are unsupported by adequate proof, and thus have no probative value. Without doubt, these documents cannot be considered prima facie evidence of the facts stated therein.

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[12] TSN of the Hearing dated September 2, 2015, p. 21.
[13] TSN of the Hearing dated September 2, 2015, p. 25.
[14] TSN of the Hearing dated September 2, 2015, p. 35.

One must take note that under Section 23, Rule 132 of the Rules of Court, only those documents consisting of ***entries in public records*** made in the performance of a duty by a public officer are ***prima facie* evidence of the facts therein stated**; ***all other public documents*** are evidence only of the fact which gave rise to their **execution and of the date of the latter**.[1] Thus, for public documents falling within the class of "*all other public documents*", the purported contents/facts stated therein must be proven as they are only prima facie evidence of their due execution and date of issuance but they do not constitute prima facie evidence of the facts stated therein.

The Letters of Delivery and Sale and the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132 as they do not reflect "*entries in public records*" made in the performance of a duty by a public officer, such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ships logbook. The said documents are not even certified copies or authenticated reproductions of original official records in the legal custody of a government office.

Even if the Court considers these documents to fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132, *i.e.* "*all other public documents*", these certified documents are only prima facie evidence of their due execution and date of issuance but they do not constitute prima facie evidence of the facts stated therein; the contents/facts stated therein must be established and proven beyond reasonable doubt. Plaintiff failed in this respect, and thus, no probative value can be accorded to its offered evidence, *i.e.*, the Letters of Delivery and Sale and the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD".

Second, the Court has observed that the records are bereft of any evidence which establishes the citizenship of accused. A matter of fact not subject of mandatory judicial notice.

There being no evidence as to accused's citizenship and the Letters of Delivery and Sale and the tables labelled as "Panned Gold Delivered and Sold Gold Buying Station-MROD" being barren of probative weight, plaintiff failed to prove that accused is a resident citizen who engaged in gold sale transactions with the BSP on taxable years 2005, 2006, 2007 and 2008 and earned substantial income therefrom.

Consequently, plaintiff failed to establish that accused is a person required to make or file a return – the first element to sustain conviction violation of Section 255 of the 1997 NIRC.

Second element: *Accused failed to make or file return for taxable year 2008; but there is no evidence to prove that accused failed to make or file income tax returns for taxable years 2005, 2006 and 2007.*

The present criminal charges for failure to file tax returns pertain to taxable years **2005** (Crim Case No. O-374), **2006** (Crim Case No. O-373), **2007** (Crim Case No. O-294), and **2008** (Crim Case No. O-295).

For taxable year 2008, plaintiff was able to present and offer a document that accused has no records of returns filed for taxable years 2008, 2009 and 2010. A Certification[15] dated February 24, 2015 was issued by Quirino A. Ramos, Jr., Revenue District Officer of RDO No. 25B of Sta. Maria Bulacan, stating that accused have not filed any income tax and value-added tax returns with the said district office for the years 2008, 2009 and 2010.

However, there is no evidence on record which proves that accused has no record of tax returns for taxable years 2005, 2006 and 2007.

In light of the foregoing findings, the Court is of the view that any discourse and determination of the third element is no longer necessary.

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[15] Exhibit P-4, Rollo, p. 1641.

Accordingly, all of the foregoing findings only lead this Court to the conclusion that the plaintiff's pieces of evidence against the accused are insufficient to sustain a verdict of guilt.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required.[16] The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. It has been defined as meaning such proof "to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty — a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it.[17]

The culpability of the accused was not sustained beyond reasonable doubt by the evidence presented by the plaintiff. There is reasonable doubt as to accused's guilt. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[18]

In *People vs. Sandiganbayan,*[19] the Supreme Court discussed the effect of granting a demurrer to evidence:

> "The demurrer to evidence in criminal cases, such as the one at bar, is *filed after the prosecution had rested its case,* and when the same is granted, it calls for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant

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[16] *People vs. Salvador, et al.,* G.R. No. 175593, October 17, 2007.
[17] People of the Philippines vs. Edgardo Ng y Doane, G.R. No. 71117, July 10, 1986, citing Moreno, Philippine Law Dictionary, 1972 Edition, p. 379, citing U.S. vs. Reyes, 3 Phil. 3.
[18] *Violeta Bahilidad vs. People,* G.R. No. 185195, March 17, 2010.
[19] G.R. No. 137707-11, December 17, 2004.

> conviction beyond reasonable doubt, resulting in a *dismissal of the* case *on the merits, tantamount to an acquittal of the accused."*

Hence, the accused is acquitted of the crimes charged.

WHEREFORE, premises considered, accused's *Demurrer to Evidence* is **GRANTED**. Accordingly, CTA Criminal Case Nos. O-294, O-295, O-373 and O-374 are **DISMISSED**.

Consequently, the accused is **ACQUITTED**, on reasonable doubt, of the crimes charged.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice