REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*

-*versus*-

AGERICO L. BANZON, as owner of Banz Built Construction, *Accused.*

CTA Crim. Case Nos. O-501 to O-514

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
JUN 0 1 2022 8:21 a.m.

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DECISION

MANAHAN, *J.:*

Accused Agerico L. Banzon is charged before this Court for violations of Sections 254 and 255 of the 1997 National Internal Revenue Code (NIRC), as amended, in the fourteen (14) Informations quoted below:

CTA Crim. Case No. O-501:

"**INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime of 'willful failure to file value added tax return and pay tax' under Section

255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about October 2008 or within twenty five (25) days following the close of third taxable quarter of 2008, in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file a VAT return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to file his Value-Added Tax Return for the third taxable quarter of 2008, in the amount of One Million Three Hundred Ninety Four Thousand Eight Hundred Sixty Eight and 85/100 pesos (Php1,394,868.85), more or less, exclusive of interest, surcharges and penalties, which willful failure to file such Value Added Tax (VAT) return resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.
>
> **CONTRARY TO LAW.**"[1]

<u>CTA Crim. Case No. O-502</u>:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under

[1] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 6 to 8.

Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about October 2008 or within twenty five (25) days following the close of third taxable quarter of 2008, in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value-Added Tax (VAT) imposed for the third taxable quarter for the year 2008, in the amount of One Million Three Hundred Ninety Four Thousand Eight Hundred Sixty Eight and 85/100 pesos (Php 1,394,868.85), more or less, exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.
>
> **CONTRARY TO LAW.**"[2]

<u>CTA Crim. Case No. O-503</u>:

"AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, <u>by way of amending the Information on record</u> hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat income tax payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

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[2] Docket (CTA Crim. Case No. O-502), pp. 6 to 8. *Cm*

'That on or about April 15, 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of income tax imposed for the taxable year 2008, in the amount of Five Million Five Hundred Seventy Five Thousand Seven Hundred Sixty One Pesos and 84/100 (Php5,575,761.84), exclusive of interest, surcharges and penalties, which willful under declaration of income in the 2008 income tax return resulted in the non-payment of correct taxes, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[3]

<u>CTA Crim. Case No. O-504</u>:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'Failure to Supply Correct and Accurate Information' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 15, 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District

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[3] Docket (CTA Crim. Case No. O-503), pp. 90 to 92.

Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000 filed with said revenue district office BIR Form No. 1701, more commonly known as the Annual Income Tax Return, for the taxable year 2008, knowing fully well that he is required by the law and by the rules and regulations to supply correct and accurate information within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to supply correct and accurate information in said BIR Form No. 1701 by stating in paragraphs 29 that the amount of his sales/receipts/ revenues/fees and cost of sales amounted only to Two Hundred Seventy Nine Thousand Six Hundred Forty-Six Pesos (P279,646.00), when disbursement vouchers and checks clearly show that he received Seventeen Million Seven Hundred Ninety-One Thousand Seven Hundred Seventy Six pesos and 85/100 (Php17,791,776.85), as payment for his construction services rendered to the Provincial Government of Palawan covering the taxable year 2008, which willful failure to supply correct and accurate information tantamount to substantial under-declaration, thus resulting to basic deficiency income tax in the amount of Five Million Five Hundred Seventy Five Thousand Seven Hundred Sixty One pesos and 84/100 (Php5,575,761.84), more or less, exclusive of interest surcharge and penalties, to the damage and prejudice of the government.'

CONTRARY TO LAW."[4]

<u>CTA Crim. Case No. O-505</u>:

"AMENDED INFORMATION

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[4] Docket (CTA Crim. Case No. O-504), pp. 6 to 8.

The undersigned Assistant State Prosecutor of the Department of Justice, by way of amending the Information on record hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about July 2009 or within twenty five (25) days following the close of the second taxable quarter of 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value-Added Tax (VAT) imposed for the second taxable quarter for the year 2009, in the amount of One Million Five Hundred Sixty Seven Thousand Seventy Two Pesos and 09/100 (Php1,567,072.09), exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[5]

CTA Crim. Case No. O-506:

"**AMENDED INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, by way of amending the Information on record hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the

[5] Docket (CTA Crim. Case No. O-505), pp. 89 to 92.

crime 'willful failure to file value added tax return and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about July 2009 or within twenty five (25) days following the close of second taxable quarter of 2009, in Puerto Princesa City, Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file a VAT return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously fail to file his Value-Added Tax Return for the second taxable quarter of 2009, in the amount of One Million Five Hundred Sixty Seven Thousand Seventy Two and 09/100 pesos (Php1,567,072.09), exclusive of interest, surcharges and penalties, which willful failure to file such Value Added Tax (VAT) return resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[6]

<u>CTA Crim. Case No. O-507</u>:

"AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, <u>by way of amending the Information on record</u> hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file value added tax return and

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[6] Docket (CTA Crim. Case No. O-506), pp. 91 to 93.

pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about January 2010 or within twenty five (25) days following the close of the fourth taxable quarter of 2009, in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file a VAT return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously fail to file his Value-Added Tax Return for the fourth taxable quarter of 2009, in the amount of One Million Six Hundred Seventy Four Thousand pesos (Php1,674,000.00), exclusive of interest, surcharges and penalties, which willful failure to file such return and pay tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.
>
> **CONTRARY TO LAW.**"[7]

CTA Crim. Case No. O-508:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

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[7] Docket (CTA Crim. Case No. O-507), pp. 91 to 93.

'That on or about January 2010 or within twenty five (25) days following the close of the fourth taxable quarter of 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value Added Tax (VAT) imposed for the fourth taxable quarter for the year 2009, in the amount of One Million Six Hundred Seventy Four Thousand pesos (Php1,674,000.00), more or less, exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[8]

CTA Crim. Case No. O-509:

"**AMENDED INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, by way of amending the Information on record hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file value added tax return and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 2010 or within twenty five (25) days following the close of the first taxable quarter of 2010,

[8] Docket (CTA Crim. Case No. O-508), pp. 6 to 8.

in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file a VAT return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously fail to file his Value-Added Tax Return for the first taxable quarter of 2010, in the amount of One Million Three Hundred Thirty Nine Thousand Two Hundred pesos (Php1,339,200.00), exclusive of interest, surcharges and penalties, which willful failure to file such Value Added Tax (VAT) return resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[9]

CTA Crim. Case No. O-510:

"**AMENDED INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, by way of amending the Information on record hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 2010 or within twenty five (25) days following the close of the first taxable quarter of 2010 in Puerto Princesa City Palawan, Philippines,

[9] Docket (CTA Crim. Case No. O-509), pp. 115 to 117. cm

> and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value-Added Tax (VAT) imposed for the first taxable quarter for the year 2010, in the amount of One Million Three Hundred Thirty Nine Thousand Two Hundred pesos (Php1,339,200.00), exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[10]

<u>CTA Crim. Case No. O-511</u>:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat income tax payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 15, 2010 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and

[10] Docket (CTA Crim. Case No. O-510), pp. 91 to 93.

feloniously attempt to evade or defeat payment of income tax imposed for the taxable year 2009, in the amount of Ten Million Four Hundred Fifty Eight Thousand One Hundred Twenty Six Pesos and 63/100 (Php10,458,126.63), more or less, exclusive of interest, surcharges and penalties, which willful failure to declare the income earned during said taxable year resulted in the evasion of payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[11]

CTA Crim. Case No. O-512:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file income tax return and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 15, 2010 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file an income tax return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously fail to file his Income Tax Return and pay tax for the taxable year 2009, in the amount of Ten Million Four Hundred Fifty

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[11] Docket (CTA Crim. Case No. O-511), pp. 6 to 8.

Eight Thousand One Hundred Twenty Six pesos and 63/100 (Php10,458,126.63), more or less, exclusive of interest, surcharges and penalties, which willful failure to file such return resulted in the non-payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[12]

CTA Crim. Case No. O-513:

"AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, by way of amending the Information on record hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file income tax returns and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 15, 2011 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file an income tax return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously fail to file his Income Tax Return and pay tax for the taxable year 2010, in the amount of Three Million Eight Hundred Five Thousand pesos (Php3,805,000.00), exclusive of interest, surcharges and penalties, which

[12] Docket (CTA Crim. Case No. O-512), pp. 6 to 8.

willful failure to file such return resulted in the non-payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[13]

CTA Crim. Case No. O-514:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat income tax payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 15, 2011 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of income tax imposed for the taxable year 2010, in the amount of Three Million Eight Hundred Five Thousand Pesos (Php3,805,000.00), more or less, exclusive of interest, surcharges and penalties, which willful failure to declare the income earned during said taxable year resulted in the evasion of payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[14]

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[13] Docket (CTA Crim. Case No. O-513), pp. 90 to 92.
[14] Docket (CTA Crim. Case No. O-514), pp. 6 to 8.

FACTS

The accused, Mr. Agerico L. Banzon, is the sole proprietor of Banz Built Construction.[15] He is a registered taxpayer of Revenue District Office (RDO) No. 36 – Puerto Princesa City, with Tax Identification Number (TIN) 113-296-811-000.[16]

On April 15, 2009, accused filed his Annual Income Tax Return (AITR) for taxable year 2008, with attached Report of Independent Auditor, Balance Sheet and Statement of Income.[17]

The investigation against the accused was prompted by National Investigation Division (NID) Memo Assignment No. KJH/SCD 2013-08-22-0678 dated August 22, 2013,[18] issued by Mr. Sixto C. Dy, Jr., Chief, NID of the Bureau of Internal Revenue (BIR), directing Group Supervisor (GS) Grace G. Marohomsalic, and Revenue Officer (RO) Shalamar G. Marangit, to conduct a preliminary investigation on the accused.

The BIR, through NID Chief Sixto C. Dy, Jr., and Mr. James H. Roldan, Assistant Commissioner (ACIR) of the Enforcement and Advocacy Service, respectively sent Access Letters to the following: (1) the Office of the City Accountant of the City Government of Puerto Princesa, dated November 13, 2013;[19] (2) Mr. Alexander B. Juliano, Director III, Fraud Audit Office of the Commission on Audit (COA), dated November 18, 2013;[20] (3) Ms. Heidi L. Mendoza, COA Commissioner, dated November 13, 2013;[21] (4) Mr. Benito A. Cataran, Director, Company Registration and Monitoring Department of the Securities and Exchange Commission (SEC), dated October 16, 2013;[22] and (5) the Revenue District Officer of RDO No. 36 – Puerto Princesa City, dated October 10, 2013.[23]

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[15] Par. 1(c), Joint Stipulation of Facts and Issued (JSFI), Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 303.
[16] Par. 1(d), JSFI, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 303.
[17] Exhibit "P-37", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 696 to 700.
[18] Exhibit "P-5", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 664.
[19] Exhibit "P-40", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 708.
[20] Exhibit "P-41", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 709.
[21] Exhibit "P-42", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 710.
[22] Exhibit "P-43", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 711.
[23] Exhibit "P-44", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 712.

On March 13, 2014, then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares wrote a letter to then Secretary of the Department of Justice (DOJ), Leila De Lima,[24] referring the Joint Complaint-Affidavit executed by GS Grace G. Marohomsalic and RO Shalamar G. Marangit,[25] for preliminary investigation and the filing of appropriate informations in court, if the evidence so warrants.

The said Joint Complaint-Affidavit averred, *inter alia,* that:

> "11. Evaluation and comparison of documents and information at hand, we discovered that MR. AGERICO L. BANZON deliberately under-declared his gross revenue for taxable year 2008 and did not declare his gross revenue for not filing his income tax returns for taxable years 2009 and 2010. Below is the computation of his under-declaration of gross revenue for taxable year 2008 and undeclared gross revenue for taxable years 2009 and 2010.

Taxable Year	Total Gross Receipts		Under-declaration/ Undeclared Gross Receipts	Percentage of under-declaration/ Undeclared Gross Receipts
	Per Investigation	Per Income Tax Return/Financial Statements		
2008	***Php17,791,776.85***	***Php279,646.00***	***Php17,512,130.85***	***6262.25%***
2009	***Php32,791,020.71***	-	***Php32,791,020.71***	***100.00%***
2010	***Php12,000,000.00***	-	***Php12,000,000.00***	***100.00%***

> 12. MR. BANZON is registered as a VAT taxpayer in his Certificate of Registration dated November 30, 2004, but he failed to file his VAT returns for taxable years 2008, 2009 and 2010. Below is the computation of his underdeclared/undeclared gross receipts for taxable years 2008, 2009 and 2010.

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[24] Exhibit "P-45", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 713 to 714.

[25] Exhibit "P-31" (certified true copy), Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 19 to 25 vis-à-vis Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 682 to 688.

Taxable year	Quarterly VAT	Total Gross Receipts Per Investigation	Total Gross Receipts Per Quarterly VAT Return	Under-declaration/ Undeclared Gross Receipts	Percentage of under-declaration/ Undeclared Gross Receipts
2008	3rd	***Php11,623,907.09***	-	***Php11,623,907.09***	***100.00%***
	4th	***Php4,922,445.37***	-	***Php4,922,445.37***	***100.00%***
2009	2nd	***Php13,058,934.11***	-	***Php13,058,934.11***	***100.00%***
	3rd	***Php3,486,715.04***	-	***Php3,486,715.04***	***100.00%***
	4th	***Php13,950,000.00***	-	***Php13,950,000.00***	***100.00%***
2010	1st	***Php11,160,000.00***	-	***Php11,160,000.00***	***100.00%***

Subsequently, Assistant State Prosecutor Niven R. Canlapan of the DOJ issued the Resolution dated July 9, 2014,[26] which was approved by Prosecutor General Claro A. Arellano, finding probable cause and recommending the filing of criminal information against the accused.

The Preliminary Assessment Notice (PAN) dated August 5, 2015, with Details of Discrepancies,[27] and the Formal Letter of Demand (FLD) dated August 10, 2016, with Details of Discrepancies,[28] were both issued by ACIR James H. Roldan.

For an orderly presentation of these consolidated cases, the Court deems it proper to state the proceedings for each case prior to consolidation. Thereafter, the Court shall summarize the evidence presented and the arguments raised by each party.

CTA Crim. Case No. O-501:

On May 25, 2015, the prosecution filed an Information before this Court,[29] charging the accused for the crime of willful failure to file his value added tax (VAT) return and pay the tax for the third taxable quarter of 2008, under Section 255 of the 1997 NIRC, as amended.

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[26] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 9 to 15.
[27] Exhibit "P-47", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 715 to 723.
[28] Exhibit "P-48", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 724 to 733.
[29] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 6 to 8.

The case was initially raffled to the Third Division of this Court.

After careful review of the Information and supporting documents filed/submitted by the prosecution, the Court, in its Resolution dated June 10, 2015,[30] found the existence of probable cause and directed the issuance of the warrant of arrest against accused. The Warrant of Arrest against the accused was issued on June 18, 2015.[31]

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[32]

CTA Crim. Case No. O-502:

On May 25, 2015, the prosecution filed an Information before this Court,[33] charging the accused for the offense of willful attempt to evade or defeat VAT payment for the third taxable quarter of 2008, in violation of Section 254 of the 1997 NIRC, as amended.

The case was initially raffled to the Third Division of this Court.

After a careful review of the said Information and supporting documents filed and/or submitted by the State Prosecutor, the Court, in its Resolution dated June 10, 2015,[34] found the existence of probable cause and directed the issuance of the warrant of arrest against accused. The Warrant of Arrest against the accused was issued on dated June 18, 2015.[35]

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[30] Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 84.
[31] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 85 to 86.
[32] Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 94; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 95; Official Receipt No. 9421121 in the amount of P50,000.00, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 116; and *Undertaking* dated July 16, 2015 signed by the accused, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 111.
[33] Docket (CTA Crim. Case No. O-502), pp. 6 to 8.
[34] Docket (CTA Crim. Case No. O-502), p. 85.
[35] Docket (CTA Crim. Case No. O-502), p. 86 to 87.

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[36]

CTA Crim. Case No. O-503:

On May 25, 2015, the prosecution filed an Information before this Court,[37] charging the accused for the crime of willful attempt to evade or defeat income tax payment for taxable year 2008 under Section 254 of the 1997 NIRC, as amended.

The case was initially raffled to the First Division of this Court.

In the Resolution dated June 22, 2015,[38] the Court granted the prosecution, through Assistant State Prosecutor Niven R. Canlapan, a period of five (5) days from notice to take appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount in the case. On July 3, 2015, the prosecution filed its Compliance,[39] submitting the Amended Information.[40]

In the Resolution dated July 13, 2015,[41] the Court noted the Compliance and admitted the Amended Information filed by the prosecution. Furthermore, after perusal of the Amended Information and supporting documents, the Court found probable cause for the issuance of warrant of arrest against the accused, and directed the issuance thereof. The Warrant of Arrest was then issued against the accused on July 22, 2015.[42]

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[36] Docket (CTA Crim. Case No. O-502), p. 89; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-502), p. 90; Official Receipt No. 9421122 in the amount of P50,000.00, Docket (Crim. Case No. O-502), p. 110; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-502), p. 105.
[37] Docket (CTA Crim. Case No. O-503), pp. 6 to 8.
[38] Docket (CTA Crim. Case No. O-503), pp. 84 to 87.
[39] Docket (CTA Crim. Case No. O-503), pp. 88 to 89.
[40] Docket (CTA Crim. Case No. O-503), pp. 90 to 92.
[41] Docket (CTA Crim. Case No. O-503), pp. 94 to 95.
[42] Docket (CTA Crim. Case No. O-503), p. 98.

On July 31, 2015, the prosecution filed its Motion for Consolidation of CTA Crim. Case No. O-503, *inter alia*, with CTA Criminal Case No. O-501.[43] In the Resolution dated August 20, 2015,[44] the Court granted the said Motion and ordered the consolidation of CTA Crim. Case No. 503 with CTA Criminal Case No. O-501.

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[45]

CTA Crim. Case No. O-504:

On May 25, 2015, the prosecution filed an Information before this Court,[46] charging the accused for the offense of willful failure to supply correct and accurate information of its income for taxable year 2008, in violation of Section 255 of the NIRC of 1997, as amended.

The case was initially raffled to the Second Division of this Court.

After due consideration of the allegations stated in the Information and personal evaluation of the attached supporting documents, the Court, in its Resolution dated June 22, 2015,[47] found the existence of probable cause to issue a warrant of arrest against the accused. The Warrant of Arrest was issued against the accused on June 24, 2015.[48]

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[43] Docket (CTA Crim. Case No. O-503), pp. 100 to 102.
[44] Docket (CTA Crim. Case No. O-503), p. 104.
[45] Docket (CTA Crim. Case No. O-503), p. 110; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-503), p. 116; Official Receipt No. 9422208 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-503), Docket, p. 120; *Undertaking* dated August 10, 2015 signed by the accused, Docket (CTA Crim. Case No. O-503), p. 119.
[46] Docket (CTA Crim. Case No. O-504), pp. 6 to 8.
[47] Docket (CTA Crim. Case No. O-504), pp. 84 to 87.
[48] Docket (CTA Crim. Case No. O-504), p. 88.

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[49]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Criminal Case No. O-504, *inter alia*, with CTA Criminal Case No. O-501.[50] In the Resolution dated August 6, 2015,[51] the Court granted prosecution's Motion for Consolidation, and ordered the consolidation of CTA Criminal Case No. O-504 with CTA Criminal Case No. O-501.

<u>CTA Crim. Case No. O-505</u>:

On May 25, 2015, the prosecution filed an Information before this Court,[52] charging the accused for the offense of willful attempt to evade or defeat VAT payment under Section 254 of the 1997 NIRC, as amended.

The case was initially raffled to the First Division of this Court.

In the Resolution dated June 10, 2015,[53] the Court gave the prosecution, through Assistant State Prosecutor Niven R. Canlapan and Prosecutor Claro A. Arellano, a period of ten (10) days from notice to take appropriate action to clarify the allegations in the Information, pertaining to the jurisdictional amount in the case. On June 29, 2015, the prosecution filed its Compliance,[54] submitting the Amended Information.[55]

After due deliberation and careful review of the Amended Information and supporting documents appended therein, the

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[49] Docket (CTA Crim. Case No. O-504), p. 93; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-504), p. 94; Official Receipt No. 9421123 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-504), p. 110; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-504), p. 105.
[50] Docket (CTA Crim. Case No. O-504), pp. 98 to 100.
[51] Docket (CTA Crim. Case No. O-504), p. 116; Docket (CTA Crim. Case No. O-501), p. 121.
[52] Docket (CTA Crim. Case No. O-505), pp. 6 to 8.
[53] Docket (CTA Crim. Case No. O-505), pp. 83 to 86.
[54] Docket (CTA Crim. Case No. O-505), pp. 87 to 88.
[55] Docket (CTA Crim. Case No. O-505), pp. 89 to 91. *cm*

Court, in its Resolution dated July 13, 2015,[56] found the existence of probable cause for the issuance of warrant of arrest against the accused. A Warrant of Arrest was issued against the accused on July 22, 2015.[57]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Criminal Case No. O-505, *inter alia*, with Criminal Case No. O-501.[58] In the Resolution dated August 26, 2015,[59] the Court granted the said Motion, and ordered the consolidation of CTA Crim. Case No. 505 with CTA Crim. Case No. O-501.

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[60]

<u>CTA Crim. Case No. O-506</u>:

On May 25, 2015, the prosecution filed an Information before this Court,[61] charging the accused of the crime of willful failure to file his VAT return and pay the tax under Section 255 of the 1997 NIRC, as amended for the second taxable quarter of 2009.

The case was initially raffled to the First Division of this Court.

In the Resolution dated June 9, 2015,[62] the Court gave the prosecution a period of five (5) days from notice to take appropriate action to clarify the allegations in the Information

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[56] Docket (CTA Crim. Case No. O-505), pp. 93 to 96.
[57] Docket (CTA Crim. Case No. O-505), p. 101.
[58] Docket (CTA Crim. Case No. O-505), pp. 103 to 105.
[59] Docket (CTA Crim, Case No. O-505), pp. 114 to 117.
[60] Docket (CTA Crim. Case No. O-505), p. 107; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-505), p. 120; Official Receipt No. 9422209 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-505), p. 124; and *Undertaking* dated August 10, 2015 signed by the accused, Docket (CTA Crim. Case No. O-505), p. 122.
[61] Docket (CTA Criminal Case No. O-506), pp. 6 to 8.
[62] Docket (CTA Crim. Case No. O-506), pp. 84 to 87.

pertaining to the jurisdictional amount in the case; and to submit the original or certified true copies of the Resolution of the prosecutor and its supporting documents. On June 26, 2015, the prosecution filed its Compliance,[63] submitting the certified true copies of the Resolution, its supporting documents, and the Amended Information.[64]

After examining the Amended Information, together with the appended documents, the Court, in its Resolution dated July 8, 2015,[65] found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the pertinent Warrant of Arrest dated July 22, 2015 was issued against the accused.[66]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-506, *inter alia*, with Crim. Case No. O-501.[67] In the Resolution dated August 18, 2015,[68] the Court granted the consolidation of CTA Crim. Case No. 506 with CTA Crim. Case No. O-501.

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[69]

CTA Crim. Case No. O-507:

On May 25, 2015, the prosecution filed an Information before this Court,[70] charging the accused of the crime of willful failure to file his VAT return and pay the tax under Section 255 of the 1997 NIRC, as amended for the fourth taxable quarter of 2009.

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[63] Docket (CTA Crim. Case No. O-506), pp. 88 to 90.
[64] Docket (CTA Crim. Case No. O-506), pp. 91 to 93.
[65] Docket (CTA Crim. Case No. O-506), pp. 167 to 171.
[66] Docket (CTA Crim. Case No. O-506), p. 174.
[67] Docket (CTA Crim. Case No. O-506), pp. 176 to 178.
[68] Docket (CTA Crim. Case No. O-506), p. 181.
[69] Docket (CTA Crim. Case No. O-506), p. 185; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-506), p. 195; Official Receipt No. 9422210 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-506), p. 199; and *Undertaking* dated August 10, 2015 signed by the accused, Docket (CTA Crim. Case No. O-506), p. 197.
[70] Docket (CTA Crim. Case No. O-507), pp. 6 to 8.

The case was initially raffled to the First Division of this Court.

In the Resolution dated June 10, 2015,[71] the Court gave the prosecution, through Prosecutor General Claro A. Arellano, a period of ten (10) days from notice to take appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount in the case. On June 29, 2015, the prosecution filed its Compliance,[72] submitting the Amended Information.[73]

After due deliberation and careful review of the Amended Information and supporting documents appended therein, the Court, in its Resolution dated July 13, 2015,[74] found the existence of probable cause for the issuance of warrant of arrest against the accused. The Warrant of Arrest was issued against the accused on July 22, 2015.[75]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-507, *inter alia*, with Crim. Case No. O-501.[76] In the Resolution dated August 26, 2015,[77] the Court granted the prosecution's Motion, and ordered the consolidation of CTA Criminal Case No. 507 with CTA Criminal Case No. O-501.

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[78]

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[71] Docket (CTA Crim. Case No. O-507), pp. 85 to 88.
[72] Docket (CTA Crim. Case No. O-507), pp. 89 to 90.
[73] Docket (CTA Crim. Case No. O-507), pp. 91 to 93.
[74] Docket (CTA Crim. Case No. O-507), pp. 95 to 98.
[75] Docket (CTA Crim. Case No. O-507), p. 99.
[76] Docket (CTA Crim. Case No. O-507), pp. 100 to 102.
[77] Docket (CTA Crim. Case No. O-507), pp. 111 to 114.
[78] Docket (CTA Crim. Case No. O-507), p. 104; Oder dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-507), p. 117; Official Receipt No. 9422211 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-507), p. 119; and *Undertaking* dated August 10, 2015 signed by the accused, Docket (CTA Crim. Case No. O-507), p. 118.

CTA Crim. Case No. O-508:

On May 25, 2015, the prosecution filed an Information before this Court,[79] charging the accused for the crime of willful attempt to evade or defeat VAT payment under Section 254 of the 1997 NIRC, as amended, for the fourth taxable quarter of 2009.

The case was initially raffled to the Second Division of this Court.

In its Resolution dated June 22, 2015,[80] the Court found the existence of probable cause to issue a warrant of arrest against the accused, after due consideration of the allegations stated in the Information and personal evaluation the attached supporting documents. The Warrant of Arrest was issued against the accused on June 24, 2015.[81]

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00, for his provisional liberty.[82]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-508, *inter alia*, with CTA Crim. Case No. O-501.[83] In the Resolution dated August 6, 2015,[84] the Court granted the consolidation of CTA Crim. Case No. O-508 with CTA Crim. Case No. O-501.

CTA Criminal Case No. O-509:

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[79] Docket (CTA Crim. Case No. O-508), pp. 6 to 8.
[80] Docket (CTA Crim. Case No. O-508), pp. 84 to 87.
[81] Docket (CTA Crim. Case No. O-508), p. 88.
[82] Docket (CTA Crim. Case No. O-508), p. 90; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-508), p. 91; Official Receipt No. 9421124 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-508), p. 104; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-508), p. 99.
[83] Docket (CTA Crim. Case No. O-508), pp. 107 to 109.
[84] Docket (CTA Crim. Case No. O-508), p. 113; Docket (CTA Crim. Case No. O-501), p. 123.

On May 25, 2015, the prosecution filed an Information before this Court,[85] charging the accused for the crime of willful failure to file his VAT return and pay the tax, under Section 255 of the NIRC of 1997, as amended, for the first taxable quarter of 2010.

The case was initially raffled to the Third Division of this Court.

In the Resolution dated June 22, 2015,[86] the Court gave the prosecution, a period of ten (10) days from notice to take appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount in the case. On July 3, 2015, the prosecution filed its Compliance,[87] submitting the Amended Information before the Court.[88]

In the Resolution dated July 13, 2015,[89] the Court found probable cause for the issuance of warrant of arrest against the accused, after a review of the Amended Information and supporting documents. The Warrant of Arrest was issued against the accused on July 20, 2015[90]

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[91]

CTA Crim. Case No. O-510:

On May 25, 2015, the prosecution filed an Information before this Court,[92] charging the accused for the crime of willful

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[85] Docket (CTA Crim. Case No. O-509), pp. 6 to 8.
[86] Docket (CTA Crim. Case No. O-509), pp. 109 to 112.
[87] Docket (CTA Crim. Case No. O-509), pp. 113 to 114.
[88] Docket (CTA Crim. Case No. O-509), pp. 115 to 117.
[89] Docket (CTA Crim. Case No. O-509), p. 119.
[90] Docket (CTA Crim. Case No. O-509), pp. 120 to 121.
[91] Docket (CTA Crim. Case No. O-509), p. 127; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Official Receipt No. 9422212 in the amount of P50,000.00, and *Undertaking* dated August 10, 2015 signed by the accused, unpaginated parts of Docket (CTA Crim. Case No. O-509).
[92] Docket (CTA Crim. Case No. O-510), pp. 6 to 8.

attempt to evade or defeat VAT payment under Section 254 of the 1997, as amended, for the first taxable quarter of 2010.

The case was initially raffled to the Third Division of this Court.

In the Resolution dated June 22, 2015,[93] the Court ordered the prosecution to rectify or correct the alleged amount of deficiency VAT in the Information within five (5) days from receipt thereof. On July 1, 2015, the prosecution filed its Compliance,[94] submitting the Amended Information.[95]

In its Resolution dated July 22, 2015,[96] the Court found the existence of probable cause for the issuance of warrant of arrest against the accused, after a perusal of the Amended Information and the supporting evidence attached to the records. The Warrant of Arrest was issued against the accused on July 23, 2015.[97]

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[98]

In the Resolution dated September 23, 2015,[99] the Court resolved to consolidate CTA Crim. Case No. O-510 with CTA Crim. Case No. O-501, pursuant to Section 3 of Rule IV of the Internal Rules of the Court of Tax Appeals, and in the interest of speedy disposition of cases.

CTA Crim. Case No. O-511:

[93] Docket (CTA Crim. Case No. O-510), pp. 85 to 88.
[94] Docket (CTA Crim. Case No. O-510), pp. 89 to 90.
[95] Docket (CTA Crim. Case No. O-510), pp. 91 to 93.
[96] Docket (CTA Crim. Case No. O-510), pp. 95 to 97.
[97] Docket (CTA Crim. Case No. O-510), pp. 98 to 99.
[98] Docket (CTA Crim. Case No. O-510), p. 101; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-510), p. 108; Official Receipt No. 9422214 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-510), p. 113; and *Undertaking* dated August 10, 2015 signed by the accused, Docket (Crim. Case No. O-510), p. 111.
[99] Docket (CTA Crim. Case No. O-510), pp. 127 to 128.

On May 25, 2015, the prosecution filed an Information before this Court,[100] charging the accused for the crime of willful attempt to evade or defeat income tax payment for taxable year 2009, under Section 254 of the 1997 NIRC, as amended.

The case was initially raffled to the Second Division of this Court.

In its Resolution dated June 22, 2015,[101] the Court found the existence of probable cause to issue a warrant of arrest against the accused, after due consideration of the allegations stated in the Information, and evaluation of the attached supporting documents. The Warrant of Arrest was issued against the accused on June 24, 2015.[102]

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[103]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-511, *inter alia*, with CTA Crim. Case No. O-501.[104] In the Resolution dated August 6, 2015,[105] the Court, in resolving the said Motion, consolidated CTA Crim. Case No. O-511 with CTA Crim. Case No. O-501.

CTA Crim. Case No. O-512:

On May 25, 2015, the prosecution filed an Information before this Court,[106] charging the accused for the crime of willful

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[100] Docket (CTA Crim. Case No. O-511), pp. 6 to 8.
[101] Docket (CTA Crim. Case No. O-511), pp. 85 to 88.
[102] Docket (CTA Crim. Case No. O-511), p. 89.
[103] Docket (CTA Crim. Case No. O-511), p. 106; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-511), p. 92; Official Receipt No. 9421125 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-511), p. 99; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-511), p. 94.
[104] Docket (CTA Crim. Case No. O-511), pp. 102 to 104.
[105] Docket (CTA Crim. Case No. O-511), p. 111; Docket (CTA Crim. Case No. O-501), p. 125.
[106] Docket (CTA Crim. Case No. O-512), pp. 6 to 8.

failure to file his ITR and pay the tax for taxable year 2009, under Section 255 of the 1997 NIRC, as amended.

The case was initially raffled to the Second Division of this Court.

The Court, in its Resolution dated June 22, 2015,[107] found the existence of probable cause to issue a warrant of arrest against the accused, after considering the allegations in the Information and examining and evaluating the supporting documents attached thereto. The Warrant of Arrest dated June 24, 2015 was issued against the accused.[108]

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[109]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-512, *inter alia,* with Crim. Case No. O-501.[110] In the Resolution dated August 6, 2015,[111] the Court, in resolving the said Motion, consolidated CTA Crim. Case No. O-512 with CTA Crim. Case No. O-501.

CTA Crim. Case No. O-513:

On May 25, 2015, the prosecution filed an Information before this Court,[112] charging the accused for the crime of willful failure to file his ITR and pay the tax under Section 255 of the NIRC of 1997, as amended, for taxable year 2010.

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[107] Docket (CTA Crim. Case No. O-512), pp. 87 to 89.

[108] Docket (CTA Crim. Case No. O-512), p. 90.

[109] Docket (CTA Crim. Case No. O-512), p. 107; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-512), p. 93; Official Receipt No. 9421126 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-512), p. 100; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-512), p. 95.

[110] Docket (CTA Crim. Case No. O-512), pp. 103 to 105.

[111] Docket (CTA Crim. Case No. O-512), p. 112; Docket (CTA Crim. Case No. O-501), p. 127.

[112] Docket (CTA Crim. Case No. O-513), pp. 6 to 8.

The case was initially raffled to the Third Division of this Court.

In the Resolution dated June 23, 2015,[113] the Court gave the prosecution a period of ten (10) days from notice, to take appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount in this case. On July 1, 2015, the prosecution filed its Compliance,[114] submitting the Amended Information.[115]

After review of the Amended Information and supporting documents, the Court, in its Resolution dated July 13, 2015,[116] found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the Warrant of Arrest dated July 20, 2015 was issued against the latter.[117]

On August 4, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[118]

In the hearing held on September 16, 2017, upon motion of the prosecution and there being no objection interposed by the accused, the Court consolidated CTA Crim. Case No. O-513 with CTA Crim. Case No. O-501.[119]

CTA Crim. Case No. O-514:

On May 25, 2015, the prosecution filed an Information before this Court,[120] charging the accused for the crime of willful

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[113] Docket (CTA Crim. Case No. O-513), pp. 84 to 87.
[114] Docket (CTA Crim. Case No. O-513), pp. 88 to 89.
[115] Docket (CTA Crim. Case No. O-513), pp. 90 to 92.
[116] Docket (CTA Crim. Case No. O-513), p. 94.
[117] Docket (CTA Crim. Case No. O-513), pp. 95 to 96.
[118] Docket (CTA Crim. Case No. O-513), p. 98; Order dated August 10, 2015 issued by RTC Puerto Princesa Acting Executive Judge, Hon. Angelo R. Arizala, Docket (CTA Crim. Case No. O-513), p. 110; Official Receipt No. 9422213 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-513), p. 114; and *Undertaking* dated August 10, 2015 signed by the accused, Docket (CTA Crim. Case No. O-513), p. 112.
[119] Minutes of the hearing held on September 16, 2015, Docket (CTA Crim. Case No. O-513), p. 126.
[120] Docket (CTA Crim. Case No. O-514), pp. 6 to 8.

attempt to evade or defeat income tax payment for taxable year 2010, under Section 254 of the NIRC of 1997, as amended.

The case was initially raffled to the Second Division of this Court.

After considering the allegations in the Information and personally examining and evaluating the supporting documents attached thereto, the Court, in its Resolution dated June 22, 2015,[121] found the existence of probable cause to issue a warrant of arrest against the accused. Thus, the Warrant of Arrest dated June 24, 2015 was issued against the latter.[122]

On July 13, 2015, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bond in the amount of ₱50,000.00 for his provisional liberty.[123]

On July 31, 2015, the prosecution filed the Motion for Consolidation of CTA Crim. Case No. O-514, *inter alia*, with CTA Crim. Case No. O-501.[124] In the Resolution dated August 6, 2015,[125] acting on the said *Motion*, the Court consolidated CTA Crim. Case No. O-514 with CTA Crim. Case No. O-501.

Consolidation of Cases:

In the Resolution dated August 13, 2015,[126] the Third Division of this Court confirmed the consolidation of CTA Crim.

[121] Docket (CTA Crim. Case No. O-514), pp. 81 to 83.
[122] Docket (CTA Crim. Case No. O-514), p. 84.
[123] Docket (CTA Crim. Case No. O-514), p. 100; Order dated July 16, 2015 issued by RTC Puerto Princesa Executive Judge, Hon. Jose Bayani J. Usman, Docket (CTA Crim. Case No. O-514), p. 90; Official Receipt No. 9421127 in the amount of P50,000.00, Docket (CTA Crim. Case No. O-514), p. 97; and *Undertaking* dated July 16, 2015 signed by the accused, Docket (CTA Crim. Case No. O-514), p. 92.
[124] Docket (CTA Crim. Case No. O-514), pp. 85 to 87.
[125] Docket (CTA Crim. Case No. O-514), p. 105; Docket (CTA Crim. Case No. O-501), p. 129.
[126] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 135 to 136.

Case Nos. O-504,[127] O-508,[128] O-511,[129] O-512[130] and O-514[131] with CTA Crim. Case No. O-501.

In the Resolution dated August 26, 2015,[132] the Court's Third Division confirmed the consolidation of CTA Crim. Case Nos. O-506 and O-503 with CTA Crim. Case No. O-501.

When arraigned on August 26, 2015,[133] the accused, duly assisted by his counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Information in CTA Criminal Case Nos. O-501,[134] O-502,[135] O-504,[136] O-508,[137] O-511,[138] O-512[139] and O-514.[140] Accordingly, these consolidated cases were initially set for Preliminary Conference on September 24, 2015, and Pre-Trial Conference on October 14, 2015.

In the Resolution dated September 8, 2015,[141] the Court confirmed the consolidation of CTA Crim. Case Nos. O-505 and

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[127] Resolution dated August 6, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 12.
[128] Resolution dated August 6, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 123.
[129] Resolution dated August 6, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 125.
[130] Resolution dated August 6, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 127.
[131] Resolution dated August 6, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 129.
[132] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 141 to 142.
[133] Minutes of the hearing held on August 26, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 143; and Resolution dated September 4, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 151 to 152.
[134] *Undertaking* signed by the accused on August 26, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 144 to 145; and *Certificate of Arraignment* dated August 26, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 148.
[135] Minutes of the hearing held on August 26, 2015; Docket (CTA Crim. Case No. O-502), p. 117; Resolution dated September 3, 2015, Docket (CTA Crim. Case No. O-502), *unpaginated*; *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-502), pp. 118 to 119; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-502), p. 122.
[136] *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-504), pp. 119 to 120; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-504), p. 117.
[137] *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-508), pp. 118 to 119; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-508), p. 114.
[138] *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-511), pp. 116 to 117; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-511), p. 112.
[139] *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-512), pp. 117 to 118; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-512), p. 113.
[140] *Undertaking* signed by the accused on August 26, 2015, Docket (CTA Crim. Case No. O-514), pp. 110 to 111; and *Certificate of Arraignment* dated August 26, 2015, Docket (CTA Crim. Case No. O-514), p. 106.
[141] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 154 to 155.

O-507 with CTA Crim. Case No. 501; and set the arraignment in CTA Crim. Case Nos. O-505, O-507, O-503 and O-506 on September 16, 2015.

Accused filed a Motion to Set Arraignment of Accused for CTA Criminal Cases Nos. O-502, O-509, O-510, O-513 on September 16, 2015.[142]

When arraigned on September 16, 2015,[143] the accused, duly assisted by his counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Amended Informations in CTA Crim. Case Nos. O-503,[144] O-505,[145] O-506,[146] O-507,[147] O-509[148] and O-513.[149] As prayed for, the Preliminary Conference previously set on September 24, 2015 was reset to October 22, 2015, and the Pre-Trial Conference previously scheduled on October 14, 2015 was reset to November 25, 2015. Upon motion of the prosecution and there being no objection interposed by accused, CTA Crim. Case Nos. O-509 and O-513 were consolidated with CTA Crim Case No. O-501.

In the Resolution dated September 23, 2015,[150] the Court consolidated CTA Crim. Case No. O-510, with CTA Crim. Case

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[142] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 162 to 163.

[143] Minutes of the hearing held on September 16, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 166; and Resolution dated September 24, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 171 to 172.

[144] *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-503), pp. 135 to 136; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-503), p. 133.

[145] *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-505), pp. 140 to 141; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-505), p. 136.

[146] *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-506), pp. 215 to 216; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-506), p. 211.

[147] *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-507), pp. 135 to 136; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-507), p. 131.

[148] Minutes of the hearing held on September 16, 2015, Docket (CTA Crim. Case No. O-509), p. 140; *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-509), pp. 144 to 145; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-509), p. 141.

[149] Minutes of the hearing held on September 16, 2015, Docket (CTA Crim. Case No. O-513), p. 126; *Undertaking* signed by the accused, Docket (CTA Crim. Case No. O-513), pp. 131 to 132; and *Certificate of Arraignment* dated September 16, 2015, Docket (CTA Crim. Case No. O-513), p. 127.

[150] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 168 to 169; and Docket (CTA Crim. Case No. O-510), pp. 127 to 128.

No. O-501, and set the arraignment of the accused for CTA Crim. Case No. O-510 on October 14, 2015.

In the Resolution dated October 7, 2015,[151] the Court ordered the consolidation of CTA Crim. Case No. O-502, with CTA Crim. Case No. O-501. Furthermore, the Court partially granted accused's Motion to Set Arraignment for CTA Crim. Case Nos. O-502, O-509, O-510 and O-513, as the accused was already arraigned in CTA Crim. Case Nos. O-502, O-509 and O-513. Hence, as previously scheduled, the Court set the arraignment of accused in CTA Crim. Case No. O-510 on October 14, 2015.

When arraigned on October 14, 2015, the accused, duly assisted by his counsel, pleaded "NOT GUILTY" of the crime charged under the Amended Information in CTA Crim. Case No. O-510.[152] Thereafter, all the consolidated cases docketed as CTA Crim. Case Nos. O-501, O-502, O-503, O-504, O-505, O-506, O-507, O-508, O-509, O-510, O-511, O-512, O-513 and O-514, were all set for Preliminary Conference on November 26, 2015, and the Pre-Trial Conference on January 27, 2016. Thus, the Preliminary Conference and Pre-Trial Conference previously scheduled on October 22, 2015 and November 25, 2015, respectively, were cancelled.[153]

On November 24, 2015, accused filed his Urgent Motion to Reset Case,[154] which was granted by the Court in its Order dated November 25, 2015.[155] Accordingly, the Court cancelled the Preliminary Conference previously scheduled on November 26, 2015, and reset to January 19, 2016.

On January 22, 2016, the prosecution filed an Omnibus Motion to Set Date for Preliminary Conference and to Reset the

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[151] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 174 to 175.

[152] Minutes of the hearing held on October 14, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 176; *Certificate of Arraignment* dated October 14, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 178; and Resolution dated October 30, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 180 to 181.

[153] Minutes of the hearing held on October 14, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 176; and Resolution dated October 30, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 180 to 181.

[154] Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 182.

[155] Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 184.

Pre-Trial,[156] which was granted by the Court, in its Resolution dated January 27, 2016.[157] Accordingly, the Court set the Preliminary Conference on February 9, 2016, and reset the Pre-Trial Conference to February 24, 2016.

The Preliminary Conference was held on January 19, 2016[158] and February 9, 2016.[159] On the other hand, on February 24, 2016, the Court reset the Pre-Trial Conference to April 13, 2016, for failure of both parties to file their respective pre-trial briefs.[160]

Accordingly, the Pre-Trial Conference proceeded on April 13, 2016.[161] Prosecution's Pre-Trial Brief was filed on March 17, 2016,[162] while the Pre-Trial Brief for the Accused was submitted on April 5, 2016.[163]

The parties filed their Joint Stipulation of Facts and Issues on April 21, 2016.[164] The Court then issued the Pre-Trial Order dated May 10, 2016,[165] thereby deeming the termination of the Pre-Trial Conference.

Trial ensued.

During trial, the prosecution presented their documentary and testimonial evidence. The prosecution offered the testimonies of the following individuals, namely: (1) RO Mr.

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[156] Docket – Vol. I (CTA Crim. Case No. O-501), pp. 193 to 195.
[157] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 198 to 199.
[158] Minutes of Preliminary Conference held on January 19, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 187 to 192.
[159] Minutes of Second Preliminary Conference held on February 9, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 200 to 206.
[160] Minutes of the hearing held on February 24, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 259; and Resolution dated March 7, 2016, Docket – Vol. 1(CTA Crim. Case No. O-501), p. 270.
[161] Minutes of the hearing held on April 13, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 302; and Resolution dated April 25, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 324 to 325.
[162] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 275 to 281.
[163] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 295 to 299.
[164] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 313 to 321.
[165] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 328 to 338.

Shalamar G. Marangit;[166] (2) RO IV/GS Ms. Grace Marohomsalic;[167] (3) Ms. Arlene N. Sabellina,[168] Assistant Provincial Accountant of Palawan and concurrently, the Officer-in-Charge; (4) Ms. Edna R. Maligro,[169] Accountant IV, Provincial Government of Palawan; and (5) Ms. Luzviminda S. Acosta,[170] a retired BIR employee (former Head of the Data Processing Section of RDO No. 36, Puerto Princesa).

On May 9, 2018, the prosecution filed its Formal Offer of Evidence.[171] The accused filed his Comment/Objection/Reservation on June 5, 2018.[172] In the Resolution dated August 1, 2018,[173] the Court admitted the prosecution's Exhibits "P-2", "P-5", "P-30", "P-31", "P-32", "P-32-a", "P-32-b", "P-33", "P-34", "P-36", "P-37", "P-38", "P-40", "P-41", "P-42" "P-43", "P-44", "P-45", "P-47", "P-48", "P-49", "P-50", "P-49", "P-50" and "P-51". However, the following exhibits were denied the admission, to wit:

1. Exhibits "P-1", "P-3", "P-4", "P-6", "P-7", "P-8", "P-9", "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" and "P-29", for failure to present the originals for comparison; and

2. Exhibits "P-30-a", "P-30-b" and "P-35", for failure to identify the exhibits.

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[166] Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 736 to 745; Minutes of the hearing held on, and Order dated, July 13, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 405 to 407.

[167] *Judicial Affidavit*, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 442 to 448, and Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 773 to 779; Minutes of the hearing held on, and Order dated, February 8, 2017, Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 493 to 494; and Minutes of the hearing held on, and Order dated, April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 517 to 518.

[168] Exhibit "P-50", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 820 to 825; Minutes of the hearing held on, and Order dated, February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 589 to 590.

[169] Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 810 to 814; Minutes of the hearing held on, and Order dated, February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 589 to 590.

[170] Exhibit "P-51", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 831 to 836; Minutes of the hearing held on, and Order dated, April 4, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 635 to 637.

[171] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 640 to 657.

[172] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 872 to 886.

[173] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 890 to 892.

Thereafter, the present consolidated cases were transferred to the First Division of this Court, pursuant to the latter's Administrative Circular No. 02-2018 dated September 18, 2018.[174]

For his part, the accused likewise presented his documentary and testimonial evidence. The testimonies of the accused,[175] and Mr. Charlito B. Padul,[176] the latter's Accountant, were offered.

On March 15, 2021, the accused filed his *Formal Offer of Exhibits*.[177] The prosecution filed its *Comment and Opposition (To Accused's Formal Offer of Exhibits)* on May 24, 2021.[178] In the Resolution dated June 16, 2021,[179] the Court admitted accused's "Exhibit 35", "Exhibit 10", "Exhibit 19", "Exhibit 29", "Exhibit 48 and 48-A", "Exhibit 36", "Exhibit 37", "Exhibit 38 and Exhibit 38-A", "Exhibit 39", "Exhibit 40", "Exhibit 40-1", "Exhibit 41", "Exhibit 42", Exhibit 43, "Exhibit 44" and "Exhibit 45". However, Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", "A-8", "Exhibit 9", "Exhibit 11", "Exhibit 12", "Exhibit 13", "Exhibit 14", "Exhibit 15", "Exhibit 16", "Exhibit 17", "Exhibit 18", "Exhibit 20", "Exhibit 21", "Exhibit 22", "Exhibit 23", "Exhibit 24", "Exhibit 25", "Exhibit 26", "Exhibit 27", "Exhibit 28", "Exhibit 30", "Exhibit 31", "Exhibit 32", "Exhibit 33", "Exhibit 34", "Exhibit 46" and "Exhibit 47", were denied admission, for failure to submit these duly marked exhibits.

The Memorandum (for the Plaintiff) was filed on October 26, 2021,[180] while the Memorandum for the Accused was posted on September 14, 2021.[181]

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[174] Refer to Resolution dated September 19, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 894.

[175] Exhibit "Exhibit 35", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 900 to 906; Minutes of the hearing held on, and Order dated, March 13, 2019, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 949 to 951.

[176] Exhibit "Exhibit 48", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 1037 to 1055; Minutes of the hearing held on, and Order dated, February 17, 2021, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 1068 to 1072.

[177] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1096 to 1117.

[178] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1216 to 1225.

[179] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1228 o 1230.

[180] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1231 to 1254.

[181] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1256 to 1273.

On December 16, 2021, the case was submitted for decision.[182]

EVIDENCE FOR THE PROSECUTION

Below is a summary of the testimonies of the prosecution's witnesses during their direct examination, cross-examination and/or responses to clarificatory questions posed by the Court, *viz.*:

1. Testimony of RO Shalamar G. Marangit:[183]

RO Mr. Shalamar G. Marangit testified, by way of Judicial Affidavit, that she is a graduate of Accountancy and a Certified Public Accountant (CPA). She stated that she is an RO assigned at NID of the BIR since 2012 up to the present. Her functions include conducting audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; submit corresponding reports on their audit or investigation; and to recommend the prosecution for criminal violations of the provisions of the 1997 NIRC, as amended.[184]

She further averred that she conducted an investigation into the reported tax violations of the accused by virtue of the NID Memo Assignment No. KJH/SCD 2013-08-22-0678 issued by their Chief, Atty. Sixto C. Dy, Jr. on August 22, 2013. She verified the documents attached to the NID Memo Assignment consisting of the official receipts from Banz Built Construction; payment vouchers from the Provincial Government of Palawan for the construction of several infrastructure projects funded by the Malampaya Funds during the taxable years 2008 and 2009. She also checked the taxpayer's profile and returns filed with the BIR's Integrated Tax System (ITS) database.[185] She further narrated that their group went to COA to get certified photocopies of the documents from the Fraud Audit Office. From the BIR ITS database, their group accessed the

[182] Docket – Vol. III (CTA Crim. Case No. O-501), p. 1275.
[183] TSN taken at the hearing held on July 13, 2016, pp. 1 to 17; and Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 736 to 745
[184] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 737.
[185] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 738.

registration details of Banz Built Construction and the returns filed during the taxable years 2008, 2009 and 2010, and found that Banz Built Construction was owned by the accused with TIN 113-296-811-000, with registered address at Ignacio St., San Jose, Puerto Princesa and that the accused is registered to file income tax, VAT, expanded withholding tax (EWT) and withholding tax on compensation (WTC). She further discovered that Banz Built Construction did not file its Annual ITR for taxable years 2009 and 2010, and for taxable year 2008, the accused declared the amount of ₱279,646.00 as sales/receipts/revenues.[186]

In addition, she attested that their group compared the documents from COA with the information in the Annual ITR of the accused for taxable year 2008. As for taxable year 2009, there was no Annual ITR filed despite receipt of income from the Provincial Government of Palawan. According to her, the gross under declaration of income of the accused and his non-declaration of income for taxable year 2009 led them to recommend the case for the issuance of Letter of Authority (LOA) No LOA-211-2013-00000182 dated September 25, 2013, which authorized them to examine the books of accounts and other accounting records of the accused for taxable years 2008 to 2012.[187]

Thereafter, they sent Access Letters to RDO No. 36, Puerto Princesa City, where the accused is a registered taxpayer, to the BIR (Information Systems Development and Operations Service) (ISDOS); SEC; COA Commissioner, Ms. Heidi L. Mendoza; COA Fraud Audit Office; City Accountant of Puerto Princesa City; and Resident Auditor of Provincial Government of Palawan. Likewise, she stated that they requested the accused to present the books of account and other accounting records of Banz Built Construction.[188]

She narrated that they received Certifications from RDO No. 36 and ISDOS for the tax returns filed by the accused and Certification of income payments from the Provincial Accountant of Puerto Princesa City. She further testified that they secured copies of the audit reports from COA.[189]

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[186] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 739 to 740.
[187] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 740.
[188] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 741.
[189] *Ibid.*

She was able to compute the deficiency income tax of the accused, as follows:[190]

	2008	2009	2010
Revenue/Receipts per Investigation	₱17,791,776.85	₱32,791,020.71	₱12,000,000.00
Less: Direct Cost per ITR/FS	97,876,10	-	-
Gross Income Per Investigation	₱17,693,900.75	₱32,791,020.71	₱12,000,000.00
Total	₱17,693,900.75	₱32,791,020.71	₱12,000,000.00
Less: Allowable Deductions per ITR	78,770.07	-	-
Net Income	₱17,615,130.65	₱32,791,020.71	₱12,000,000.00
Less Personal Exemptions	74,000.00		
Taxable Income Per Investigation	₱17,541,130.68	₱32,791,020.71	₱12,000,000.00
TAX DUE PER INVESTIGATION			
2008: ₱125,000 + (32% X 17,041,130.62)	5,578,161.82		
2009: ₱125,000 + (32% X 32,191,020.71)		10,458,126.63	
2019: ₱125,000 + (32% X ₱11,500,000.00)			3,805,000.00
Less: Tax Due per ITR			
Tax Payment for 1st Quarter	₱1,657.02	₱1,969.75	₱1,408.75
Annual Payment	742.96	-	-
Total	₱2,399.98	1,969.75	1,408.75
DEFICIENCY INCOME TAX	₱5,575,761.84	₱10,456,156.88	₱3,803,591.25

She further testified that they prepared a memorandum addressed to then CIR Kim S. Jacinto-Henares, recommending that the results of the investigation that their group conducted on the accused be immediately forwarded to the Run After Tax Evaders (RATE) - Legal Writing & Appearance Group (LWAG), for evaluation and preparation of the corresponding pleadings

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190 *Ibid.*

required for the filing of a criminal case against the accused with the DOJ.[191]

Subsequently, the CIR issued a letter referring the matter to the Secretary of Justice for the filing of criminal action against the accused. Thereafter, they executed their Joint Complaint-Affidavit in connection with the investigation that they conducted as to the tax liabilities of the accused.[192]

On cross-examination, she testified that in the course of the investigation, they were able to secure a Certification from the Provincial Government of Palawan showing the income receipt of the accused for taxable years 2008 to 2010.[193] She also stated that the COA records and vouchers, revealed that the Provincial Government of Palawan withheld the five percent (5%) VAT. She continued that during the investigation, she did not attempt to ask or inquire from the Provincial Government if they withheld the income tax from the said projects.[194] She declared that she gathered COA records such as disbursement vouchers, official receipts by Banz Built Construction which is owned by the accused and checks issued to the accused by Provincial Government of Palawan.[195] She testified that the case was filed for gross under declaration of income for taxable year 2008 based on the Certification issued by the Provincial Accountant of the Provincial Government of Palawan, stating that there was income received for taxable years 2008 to 2010. She declared that the Annual ITR for taxable year 2008 of the accused, indicated a small amount of income from sales of ₱279,646.00 whereas his income receipt from the Provincial Government of Palawan amounted to ₱17,791,776.85 which is indicative of substantial under declaration.[196]

<u>2. RO Ms. Grace Marohomsalic</u>:[197]

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[191] Exhibits "P-49" and "P-49-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 743.
[192] *Ibid.*
[193] TSN taken at the hearing held on July 13, 2016, p. 10.
[194] TSN taken at the hearing held on July 13, 2016, p. 11.
[195] TSN taken at the hearing held on July 13, 2016, p. 12.
[196] TSN taken at the hearing held on July 13, 2016, pp. 13 to 14.
[197] TSN taken at the hearing held on February 8, 2017, Docket – Vols. 1 and 2 (CTA Crim. Case No. O-501), pp. 495 to 516 *vis-à-vis* TSN taken at the hearing held on April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 519 to 536; and Exhibit "P-49", Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 442 to 448.

RO Ms. Grace Marohomsalic testified, by way of Judicial Affidavit, that she is an RO IV, assigned at the NID since September 2009 up to the present. As such, her functions are to conduct audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; to submit corresponding reports on audit or investigation; and to recommend the prosecution for criminal violations of the provisions of the 1997 NIRC, as amended.[198]

She stated that as a GS, she conducted an investigation into the reported tax violations of the accused. According to her, she supervised the actions taken by RO Shalamar G. Marangit and she was the one who sent the notices to the accused for his submission of books of accounts and other accounting records, consisting of the First Notice for the presentation of records/documents requested, Second and Final Notice, Second Request for Presentation of Records and the Final Notice.[199]

She further testified that RO Shalamar G. Marangit conducted the preliminary investigation against the accused and after coming up with her findings and the issuance of the LOA, they executed a Joint Complaint-Affidavit against the accused before the DOJ. She also asserted that it was then CIR Kim S. Jacinto-Henares who authorized the filing of the Joint Complaint-Affidavit, through a referral letter signed by her and addressed to then DOJ Secretary, Leila De Lima.[200]

She stated that for failure of the accused to submit the requested documents, they were constrained to issue the PAN dated August 5, 2015. She alleged that she was the one who sent the PAN to the accused by registered mail and by licensed courier, as evidenced by the registry receipt and the LBC Express, Inc. receipt attached to the PAN. [201]

Similarly, for failure to refute the findings contained in the PAN, they issued the FLD dated August 10, 2016 and sent the same to the accused by registered mail and by licensed courier,

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[198] Exhibit "P-49", Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 443.
[199] Exhibits "P-49" and "P-49-a", Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 443 to 444.
[200] Exhibits "P-49" and "P-49-a", Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 444 to 445.
[201] Exhibits "P-49" and "P-49-a", Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 446. can

as evidenced by the registry receipt and LBC Express, Inc. receipt attached to the FLD.[202]

On cross-examination, she testified that their investigation disclosed that the accused is guilty of tax evasion for taxable years 2008, 2009 and 2010 for non-payment of income tax and VAT.[203] She mentioned that she was able to determine that the income of the accused was derived from transactions of Banz Built Construction with the Government of Palawan and that this income tax was supposed to have been withheld by the Government of Palawan.[204]

She nevertheless clarified that it was RO Shalamar G. Marangit who actually conducted the investigation.[205]

On the basis of the official receipts from the City Government of Palawan regarding the payments made to Banz Built Construction, they discovered that there was under declaration of more than thirty percent (30%) of taxable income tax for taxable year 2008, and that the accused did not file his ITR for taxable years 2009 and 2010. In this regard, they filed a case before the DOJ for under declaration for taxable year 2008 and non-filing of tax for taxable years 2009 and 2010.[206]

On continuation of her cross-examination, she alleged that she supervised the investigation in the form of reviewing the documents examined by RO Shalamar G. Marangit. She declared that she counterchecked the documents given to them by the Provincial Government of Palawan, consisting of the checks, the payments made to the accused, the official receipts billed by the accused to the Provincial Government of Palawan and the disbursement vouchers as well as the documents they accessed from the other government agencies and the BIR.[207]

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[202] Exhibits "P-49" and "P-49-a", Docket – Vol. 1 (CTA Crim. Case No. O-501), p. 447.
[203] TSN taken at the hearing held on February 8, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 503 to 504.
[204] TSN taken at the hearing held on February 8, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 504 to 505.
[205] TSN taken at the hearing held on February 8, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 507 to 508.
[206] TSN taken at the hearing held on February 8, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 508.
[207] TSN taken at the hearing held on April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 523 to 524.

She also stated that the CIR authorized the DOJ to file the case but there is no authority directly addressed to her to file the case against the accused.[208]

She explained that both the PAN and the FLD demanded from the accused the payment of deficiency income tax and VAT for TYs 2008, 2009, and 2010, concerning the income payments made by the Provincial Government of Palawan to the accused.[209]

She admitted that they made a minor mistake in the computation of deficiency VAT. She explained that instead of computing the gross receipts by 12% output tax, they deducted the EWT which is already the 5% contractor's tax from the gross. It was a mistake because in the schedules given by the Provincial Government of Palawan it was indicated then that she got the net amount instead of the gross amount but it was nevertheless not a material amount. She further claimed that they filed the case because the accused did not file his income tax and VAT returns.[210]

3. <u>Testimony of Ms. Arlene N. Sabellina</u>:[211]

Ms. Arlene N. Sabellina testified, by way of Judicial Affidavit, that she is the Assistant Provincial Accountant of the Provincial Government of Palawan and concurrently the Officer-in-Charge. As an Assistant Provincial Accountant, she oversees the entire accounting functions including tax matters of the Provincial Government of Palawan and other matters related to the records in the accounting division. She stated that she was the one who issued the Certification dated December 5, 2013 on the income payments made by the Provincial Government of Palawan to Banz Built Construction pursuant to the request made by the BIR for a certification on the income payments

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[208] TSN taken at the hearing held on April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 527 to 528.

[209] TSN taken at the hearing held on April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 528 to 532.

[210] TSN taken at the hearing held on April 19, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 532 to 534.

[211] TSN taken at the hearing held on February 28, 2018, Docket – Vol, 2 (CTA Crim. Case No. O-501), pp. 591 to 600; and Exhibit "P-50", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 820 to 825.

received by Banz Built Construction and the taxes withheld therefrom for taxable years 2008 to 2010.[212]

She stated that she based the Certification on the accounting records of their office, specifically the Journal Entry Vouchers in the New-Government Accounting System currently being used by their office. She explained that the Journal Entry Vouchers is a record of accounting entries for each and every transaction made by the Government, including the disbursement vouchers, check number, official receipt number and other supporting documents for said government transaction. She, however, testified that they do not have copies of the disbursement vouchers, official receipts and other supporting documents because they have already forwarded them to the COA, pursuant to Section 347 of Republic Act (RA) No. 7160 and Article 218 of the Revised Penal Code (RPC).[213]

On cross-examination, she testified that the Certification she issued reflected the gross payments made to Banz Built Construction. She asserted that they, however, failed to include the VAT deductions and income tax withheld but that the same were religiously remitted to the BIR.[214] She stated that the amount the accused actually received is net of taxes and other deductions like the recoupment of the mobilization and excavation fees.[215] She further claimed that before they paid the accused, they deducted the VAT and EWT which is 1% and remitted the same to the BIR.[216]

<u>4. Testimony of Ms. Edna R. Maligro</u>:[217]

Ms. Edna R. Maligro testified, by way of Judicial Affidavit, that she is an Accountant IV of the Provincial Government of Palawan. As such, she does accounting functions for the

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[212] Exhibit "P-50", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 821 to 822.
[213] Exhibits "P-50" and "P-50-a", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 823.
[214] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 593 to 595.
[215] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 596.
[216] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 597.
[217] TSN taken at the hearing held on February 28, 2018, Docket – Vol, 2 (CTA Crim. Case No. O-501), pp. 600 to 612; and Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 810 to 814. am

Provincial Government of Palawan and other matters related to the records of accounting. She stated that she prepared the Schedule of Payments attached to the Certification of income payments made by the Provincial Government of Palawan to Banz Built Construction per letter of the BIR requesting for the income payments and taxes withheld to Banz Built Construction for the taxable years 2008 to 2010.[218]

She stated that she based the Schedule of Payments on the accounting records of their office, specifically the Journal Entry Vouchers from Electronic New Government Accounting System used by their office.[219]

On cross-examination, she affirmed that the Certification dated December 5, 2013 stated the gross payments made to Banz Built Construction, but since there were several deductions made from the said amount like taxes, excavation fees and others, the accused only received the net amount.[220] She confirmed that Banz Built Construction in relation to the projects with the Provincial Government did not actually receive the amount reflected in the Certification. But as to how much the accused actually received was not reflected in the schedule.[221] She admitted that the schedule also reflected the gross, which is the total amount of the project awarded to the accused or the total billing per voucher. According to her, the VAT and EWT were already deducted from the amount received by the accused.[222]

On redirect examination, she testified that she deducted 2% EWT and 5% VAT.[223]

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[218] Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 811 to 812.
[219] Exhibit "P-49", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 812.
[220] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 604 to 606.
[221] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 608.
[222] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 609.
[223] TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 610.

5. Testimony of Ms. Luzviminda S. Acosta:[224]

Ms. Luzviminda S. Acosta testified, by way of Judicial Affidavit, that she was an employee of the BIR as a DPS Head of RDO No. 36, Puerto Princesa City. As head of DPS, she was the one in-charge of the BIR tax returns filed with RDO No. 36 and was also the custodian of the said BIR tax returns and she certifies copies of said tax returns when requested.[225]

She attested that sometime in 2013, she issued certified copies of the tax returns of the accused and a Certification that as per their records in the Integrated Tax System (ITS), accused did not file certain tax returns. She issued the same because there was a letter addressed to the Revenue District Officer of BIR RDO No. 36, Puerto Princesa City from the BIR National Office requesting for certified copies of the listed documents thereto filed by accused for taxable years 2008 to 2012 and the issuance of a certification if said records are not within the said office.[226] She issued the certified copies of the ITR of accused for taxable year 2008 and his percentage tax returns ITS printout for taxable years 2008 to 2010.[227] As per Certification, there are no records of the following: (a) ITR for taxable years 2009 to 2012; (b) Quarterly ITR 1701Q except 1st Quarter 2009 and 2nd Quarter 2010; (c) VAT Returns for taxable years 2008 to 2012; (d) 1604CF Alpha List and 1601E for taxable years 2008 to 2012; (e) Final Returns for taxable years 2008 to 2012; and (f) Withholding Tax on Compensation and Expanded Withholding Tax (WE) for taxable years 2008 to 2012.[228]

On cross-examination, she confirmed that she is the DPS Head.[229] As head of DPS, part of her functions is to be in charge of the filing, receiving and the storage of ITRs, quarterly VAT and percentage tax returns. She also certifies copies of these returns when requested.[230] She mentioned that the ITR is filed annually and quarterly.[231] She further confirmed that the BIR

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[224] TSN taken at the hearing held on April 4, 2018, pp. 1 to 24; and Exhibit "P-51", Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 831 to 836.
[225] Exhibit "P-51", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 832.
[226] Exhibit "P-51", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 832 to 833.
[227] Exhibit "P-51", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 833 to 834.
[228] Exhibit "P-51", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 834 to 835.
[229] TSN taken at the hearing held on April 4, 2018, p. 7.
[230] TSN taken at the hearing held on April 4, 2018, pp. 7 to 8.
[231] TSN taken at the hearing held on April 4, 2018, pp. 8 to 9. cm

employees who are her subordinates are assigned to receive these returns from different taxpayers but she has custody of these returns.[232] She claimed that after these returns are received, they are encoded into the computer.[233]

Admitted evidence of the prosecution.

To establish the guilt of the accused beyond reasonable doubt, the prosecution presented the following documentary evidence, which were admitted by the Court in its Resolution dated August 1, 2018, to wit:

Exhibits	Description
"P-2"	Letter addressed to the Revenue District Officer (RDO) of Revenue District Office No. 36 – Puerto Princesa City dated October 10, 2013[234]
"P-5"	NID Memo Assignment No. KJH/SCD 2013-08-22-0678 dated August 22, 2013 to GS Grace G. Marahomsalic[235]
"P-30"	Second Request for Presentation of Records dated September 26, 2014[236]
"P-31"	Joint Complaint-Affidavit executed by Shalamar Marangit and Grace Marohomsalic, consisting of seven (7) pages[237]
"P-32"	Certification issued by Ms. Ma. Rosario Charo G. Enriquez-Curiba dated January 9, 2014 with its attached Annexes 1 and 2[238]
"P-32-a"	Return Processing System (RPS) Data-extracted on January 8, 2014 as Annex I to the Certification issued by Ma. Rosario Charo G. Enriquez-Curiba[239]
"P-32-b"	Collection Bank Reconciliation (CBR) Data-extracted on January 8, 2014 as Annex 2 to the Certification issued by Ma. Rosario Charo G. Enriquez-Curiba[240]

[232] TSN taken at the hearing held on April 4, 2018, pp. 14 to 15.
[233] TSN taken at the hearing held on April 4, 2018, pp. 16 to 17.
[234] Same as Exhibit "P-44", Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 712.
[235] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 664.
[236] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 681.
[237] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 19 to 25.
[238] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 689 to 691.
[239] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 691.
[240] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 690.

"P-33"	Certification issued by Arlene N. Sabellina of the Office of the Provincial Accountant, Provincial Government of Palawan[241]
"P-34"	Total Payments made to Banzbuilt Construction issued by Arlene N. Sabellina of the Office of the Provincial Accountant, Provincial Government of Palawan[242]
"P-36"	Certification issued by Luzviminda S. Acosta of Revenue District Office (RDO) No. 36[243]
"P-37"	Annual ITR of the accused for taxable year 2008 with its attachment such as Report of Independent Auditor, Balance Sheet and Statement of Account, all consisting of five (5) pages[244]
"P-38"	Extracted Computer-Printout from the BIR ITS for taxable years 2010 to 2008 consisting of seven (7) pages[245]
"P-40"	Access Letter to the City Accountant of the City Government of Puerto Princesa dated November 13, 2013[246]
"P-41"	Access Letter to Mr. Alexander B. Juliano of the COA Fraud Audit Office dated November 18, 2013[247]
"P-42"	Access Letter to Ms. Heidi L. Mendoza of the Commission on Audit dated November 13, 2013[248]
"P-43"	Access Letter to Director Benito A. Cataran of the Securities and Exchange Commission (SEC) dated October 16, 2013[249]
"P-44"	Access Letter to the Revenue District Officer of Revenue District Office No. 36 – Puerto Princesa City dated October 10, 2013[250]
"P-45"	Letter Referral from the Commissioner of Internal Revenue for the criminal charges against Agerico Banzon[251]

[241] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 692.
[242] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 693.
[243] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 695.
[244] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 696 to 700.
[245] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 701 to 707.
[246] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 708.
[247] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 709.
[248] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 710.
[249] Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 711.
[250] *Supra* Note 231.
[251] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 713 to 714.

"P-47"	PAN[252]
"P-48"	FLD[253]
"P-49"	Judicial Affidavit of Shalamar Marangit[254]
"P-50"	Judicial Affidavit of Grace Marohomsalic
"P-49"	Judicial Affidavit of Edna R. Maligro[255]
"P-50"	Judicial Affidavit of Arlene N. Sabellina[256]
"P-51"	Judicial Affidavit of Luzviminda S. Acosta[257]

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the prosecution, the defense presented the following witnesses, namely: (1) Mr. Agerico L. Banzon, the accused himself; and (2) Mr. Charlito B. Padul. Their testimonies during their direct examination, cross-examination and responses to clarificatory questions are summarized as follows:

1. Testimony of Mr. Agerico L. Banzon:[258]

Accused testified, by way of Judicial Affidavit, that he is a contractor who entered into several construction projects with the Provincial Government of Palawan. According to him, the charges against him for tax evasion and misrepresentation in tax returns have no basis because the BIR allegedly erred in computing his taxable income which did not account for the expenses he incurred for labor and materials. He maintained that he has an accountant who prepares his tax returns and and computes the taxes on his behalf since he admitted to be ignorant of tax laws as well as BIR rules and regulations.[259]

He further attested to the following: (a) that he filed monthly percentage tax returns in lieu of VAT returns as evidenced by the Monthly Percentage Tax Return dated July 2008, August 2008 and September 2008; (b) that he paid

[252] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 715 to 723.
[253] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 724 to 733.
[254] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 736 to 745.
[255] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 810 to 814.
[256] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 820 to 825.
[257] Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 831 to 836.
[258] TSN taken at the hearing held on March 13, 2019, pp. 1 to 39; and Exhibit "A-35", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 900 to 906
[259] Exhibit "A-35", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 902.

percentage taxes in lieu of VAT as evidenced by revenue official receipts dated on August 20, 2008, September 1, 2008 and October 9, 2008;[260] (c) that his income tax was already withheld by the Provincial Government of Palawan, as evidenced by the *Certificate of Final Tax Withheld at Source* dated August 1, 2008 to August 31, 2008, September 1, 2008 to September 31, 2008 and October 1, 2008 to October 31, 2008; (d) that it was his accountant who filled the BIR Form No. 1701, for taxable year 2008 and that he did not know and understand if that was correct or not, as shown in the Report of Accountant Annabelle Pastrana Ong and all the taxes due for the said period were withheld by the Provincial Government of Palawan as evidenced by the Certificate of Creditable Tax Withheld at Source dated August 1, 2008 and October 31, 2008; (e) that the taxes due for the second taxable quarter of 2009 were withheld by the Provincial Government of Palawan as evidenced by the Certificate of Final Tax Withheld at Source dated April 1, 2009 to April 30, 2009 and June 1, 2009 to June 30, 2009;[261] (f) that he filed monthly percentage tax returns dated May 2009 and June 2009; (h) that he filed monthly percentage tax returns dated December 2009 and October 2009' (i) that the taxes due for the fourth taxable quarter of 2009 were withheld by the Provincial Government of Palawan, as evidenced by Letter by the Officer-in-Charge of the Office of the Provincial Accountant dated January 30, 2015; (j) that he filed monthly percentage tax returns dated January 2010, February 2010 and March 2010;[262] (k) that the income taxes due for the taxable year 2009 were withheld by the Provincial Government of Palawan as evidenced by the Certificates of Creditable Tax Withheld at Source dated April 30, 2009, June 1, 2009, June 30, 2009 and December 31, 2009; (l) that he filed quarterly income tax return for the first and third taxable quarter of 2009; (m) that he filed quarterly income tax return for the first, second and third taxable quarters of 2010; and (n) that the taxes due for taxable year 2010 were withheld by the Provincial Government of Palawan as evidenced by the Certificates of Final Tax Withheld at Source dated May 1, 2010 to May 31, 2010.[263]

On cross-examination, he testified that he was an undergraduate of Civil Engineering at Far Eastern University

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[260] *Ibid.*
[261] Exhibit "A-35", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 903.
[262] Exhibit "A-35", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 904.
[263] Exhibit "A-35", Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 904 to 905.

(FEU). He confirmed that he has been in the business for more than ten (10) years and that he was the Vice-President of ALB Construction Corporation, a family corporation, and then he formed Banz Built Construction, in 1992.[264] He had also some experience in Saudi Arabia as a civil inspector in Shoda Petrostar Ltd., a Japanese firm which constructed the King Fahd International Airport.[265]

He confirmed that he filed monthly percentage tax return *in lieu* of VAT return for the third taxable quarter of 2008.[266] He alleged that for the third taxable quarter of 2008, and as indicated in the *Certification* made by the Provincial Accountant, the total collection of Banz Built Construction is ₱17,791,776.85, that is less the percentage tax and the 5% VAT. This amount is not indicated in the percentage tax return and the attachments that he filed before the BIR.[267]

He stated that the signature appearing in the percentage tax return is the signature of his secretary, but admitted that he is not sure if said signature is that of his secretary although he claimed that whenever he is on sight and some documents need to be filed, his accountant brings the same to the office then somebody from his office signs it for him.[268] He stated that he has given full authority to his secretary and his wife to sign documents on his behalf. He confirmed that the amount of ₱17,791,776.85 does not appear in the said return.[269] He also cannot answer if all the percentage tax returns filed for third taxable quarter of 2008, if computed, will total to the said amount because he is not an accountant.[270]

He further testified that it was his accountant who filed the BIR Form No. 1701 for taxable year 2008 and he merely signed the same.[271] According to him, the amount of ₱17,791,776.85 was not reflected in Annex 10, Statement of Income made and signed by his accountant Annabel Pastrana

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[264] TSN taken at the hearing held on March 13, 2019, p. 8.
[265] TSN taken at the hearing held on March 13, 2019, p. 9.
[266] TSN taken at the hearing held on March 13, 2019, pp. 9 to 11.
[267] TSN taken at the hearing held on March 13, 2019, pp. 11 to 13.
[268] TSN taken at the hearing held on March 13, 2019, p. 15.
[269] TSN taken at the hearing held on March 13, 2019, p. 16.
[270] TSN taken at the hearing held on March 13, 2019, pp. 16 to 17.
[271] TSN taken at the hearing held on March 13, 2019, p. 18. *om*

Ong. He stated that perhaps the accountant did not declare the amount of ₱17,791,776.85.[272]

He also stated that he filed monthly percentage tax return for the second and fourth quarters of 2009, and the first quarter of 2010.[273] He also claimed that what he filed in taxable years 2009 and 2010 are quarterly ITRs.[274] He further alleged that the computation has no basis since it did not account for his expenses for labor and materials and he did not know if his accountant submitted any document to the BIR to substantiate his expenses for labor and materials.[275]

He claimed that the accountant receives a monthly retainer fee from him and whenever there is a need to file documents, she goes to his office and have the documents prepared, and any amount that is indicated in those documents, will be paid by him. He repeatedly declared that he heavily relies on his accountant to handle tax matters.[276]

He also stated that all his projects are government projects and it is the government that deducted/withheld all the necessary taxes before he even received his actual payment for services rendered. He declared that he had no intention of depriving the government of the right amount of taxes and points to the Provincial Government, as withholding agent, who has the duty to deduct all the necessary taxes. He contends that he is aware that the same were deducted as shown in the Certificate of Final Tax Withheld at Source, the BIR Form No. 2306, and the Certificate of Creditable Tax Withheld at Source.

Upon clarification by the Court, the accused also stated that his former accountant has been in his service since he formed his company Banz Built Construction in 1992 until 2010. He asserted that she has been continuously doing all the preparation and filing of tax returns with the BIR but that she is no longer under his service.[277]

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[272] TSN taken at the hearing held on March 13, 2019, p. 19.
[273] TSN taken at the hearing held on March 13, 2019, pp. 23 to 24.
[274] TSN taken at the hearing held on March 13, 2019, p. 24.
[275] TSN taken at the hearing held on March 13, 2019, p. 25.
[276] TSN taken at the hearing held on March 13, 2019, p. 26.
[277] TSN taken at the hearing held on March 13, 2019, pp. 31 to 32.

When asked by the Court, whether he received any Final Assessment Notice (FAN) in connection with his tax liability, he asked the Court if he can reserve the answer as he still has to search for this document.[278]

2. Testimony of Mr. Charlito B. Padul:[279]

Mr. Charlito B. Padul, testified by way Judicial Affidavit, that he is the present accountant of the accused, and his services were engaged when these cases were already filed in court. He stated that the documents pertinent to these cases were delivered to him by the accused.[280] Based on the documents presented to him by the accused, he found out that the proper procedure for filing of the tax cases was not followed, hence, he concluded that the accused was denied due process. He observed that the accused relied on his former accountant for his tax concerns and other matters related to his tax obligations and that there was no intention to evade payment as evidenced by the payment of taxes made by the accused.[281]

He claimed that the accused did not receive a Preliminary Assessment Notice, Final Assessment Notice and Demand Letter prior to filing of these cases, and that said official notices were allegedly received by the accused only after the cases were already filed by the BIR. He explained that based on the provisions of the NIRC and its implementing regulations particularly Revenue Regulation (RR) No. 12-99, it is part of due process to notify the taxpayer of the deficiency taxes to enable him to contest or protest the same before the BIR can demand payment, and before cases may be filed against the taxpayer.[282]

Based on the records given to him, he discovered that it was only on August 5, 2015 when the PAN was prepared and it was only on January 28, 2016 when the same was transmitted to Puerto Princesa *via* LBC and *via* mail. He stated that on January 29, 2016, the PAN sent by LBC was allegedly delivered to accused as reflected in the LBC receipts, but there is no proof that the accused received the same, and that there is no proof

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[278] TSN taken at the hearing held on March 13, 2019, p. 34.
[279] TSN taken at the hearing held on February 17, 2021, pp. 1 to 43; and Exhibit "A-48", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 1037 to 1055.
[280] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1037.
[281] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1038.
[282] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1038.

of service to the accused of the PAN allegedly sent by mail and by LBC. He further attested that there was no FLD before the cases were filed because the one allegedly sent by BIR was prepared only on August 10, 2016. He concluded that there was no FAN issued before the cases were filed. [283]

He further asserted that upon receipt of the Formal Demand with BIR Form No. 0401, they already paid the undisputed deficiency taxes for taxable years 2011 and 2012. They also made voluntary payment for the deficiency income tax based on their computation covering taxable years 2008 and 2009, in the amount of ₱277,232.43, as evidenced by the Landbank Deposit Slip dated February 3, 2017 marked as "A-40" and BIR Payment Form 0605 dated February 3, 2017 marked as "A-40-1". He also mentioned that he submitted a request for reconsideration/protest for those assessments which are the subject matter of these cases. The same are still pending resolution with the BIR.[284]

He reiterated that the accused relied on his accountant in the preparation of its financial records, his tax returns, and in the determination of the kind of taxes to be paid and the amount of taxes to be paid to the BIR. He claimed that when he would ask the accused about certain tax matters which happened before his engagement as his accountant, the accused would always refer him to his former accountant, since the accused told him that all tax matters were handled by said accountant. Moreover, the Audit and Financial Reports of the accused submitted to the BIR were prepared and signed by the former accountant including the kind/nature of tax to be paid.[285]

He found that the tax obligations of the accused for the third taxable quarter of 2008, specifically July, August and September, were settled by paying the percentage tax and he also paid the final VAT for his project with the Provincial Government. He also stated that the Provincial Government immediately deducted and withheld the VAT equivalent to 5% of the gross amount of the contract of the accused before payment was released to him. The accused also paid his income tax for taxable year 2008 which includes his quarterly payments as shown in BIR Form No. 2307, the Certificate of Creditable

[283] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1039.
[284] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1040.
[285] *Ibid.*

Tax Withheld at Source dated August 1, 2008 and BIR Form No. 2307 dated October 1, 2008. He claimed that both payments were remitted to the BIR by the Provincial Government of Palawan, equivalent to 2% of the gross amount collected from the contract executed by the accused with the said entity. He further stated that the accused filed his Annual ITR for taxable year 2008.[286]

As to the charge of failure to supply correct and accurate information in the BIR Form No. 1701 for taxable year 2008, Mr. Padul stated any error or mistakes committed in the preparation of BIR Form No. 1701, the same was not willful on the part of the accused. He claimed that there was never an attempt to evade payment of taxes. The nature/kind of the tax to be paid and the amount thereof were determined by his accountant. The fact that he retained the services of an accountant, paid the taxes as computed and prepared by his accountant clearly show that there was no intention on his part to evade payment of taxes. [287]

He stated that the accused paid the 5% Final VAT on his collection from the government amounting to ₱702,093.24 which were withheld by the Provincial Government from his collection of ₱14,418,864.80 for the second taxable quarter of 2009, as shown by the Certificates of Final Withholding Tax (BIR Form No. 2306).[288] Accused also paid his VAT for the fourth taxable quarter of 2009, as evidenced by BIR Form No. 2551M. He also claimed that the Certification issued by the Provincial Government shows that the amount of ₱127,457.80 and ₱750,000.00, were remitted by the Provincial Government of Palawan on December 29, 2009. Also, the Percentage Tax Return shows that the accused paid ₱1,185.00 for the fourth taxable quarter of 2009. [289]

Moreover, he declared that the records show that the accused paid percentage tax in lieu of VAT for the first taxable quarter of 2010, as proved by BIR Form No. 2551M. He further stated that the income tax for the taxable year 2009 was paid, as proved by BIR Form No. 2307 and BIR Form No. 1701Q. He

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[286] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 1041 to 1043.
[287] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1043.
[288] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 1043 to 1044.
[289] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), pp. 1044 to 1045.

asserted that it is not true that accused failed to pay his income tax for taxable year 2009, for most of it was automatically deducted by the Provincial Government for taxable year 2009 and that quarterly payments were also made.[290]

He continued that the accused paid his income tax for taxable year 2010, as shown in BIR Form No. 1701Q and BIR Form No. 2307.[291]

On cross-examination, he maintained that the proper procedure before filing the cases was not followed. He explained that the case was filed without the PAN and the FAN being received by the taxpayer.[292] He further alleged that there was no intention to evade tax payments because the accused pays regularly their monthly filing, BIR requirements or BIR filing.[293]

He stated that he has no personal knowledge as to the preparation of the tax returns filed by the accused before the BIR, considering that he was not the accountant for taxable years 2008, 2009 and 2010. He merely relied on the records forwarded to him by the accused.[294]

Upon clarification by the Court, Mr. Padul explained that the financial report was signed by the former accountant, and the monthly filings were prepared by the latter.[295] He asserted that it is a common practice that the accountant prepares the Financial Report and all the requirements with the BIR, such as the monthly filings and quarterly filings and it is the taxpayer who pays the tax liability based on the amounts indicated therein.[296] He claimed that because of the volume of documents, it is a common practice for ordinary taxpayers to rely on the accountants. [297]

Admitted evidence of the accused.

[290] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1045.
[291] Exhibit "A-48", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 1046.
[292] TSN taken at the hearing held on February 17, 2021, p. 21.
[293] TSN taken at the hearing held on February 17, 2021, pp. 23 to 24.
[294] TSN taken at the hearing held on February 17, 2021, pp. 25 to 26.
[295] TSN taken at the hearing held on February 17, 2021, p. 30.
[296] TSN taken at the hearing held on February 17, 2021, pp. 30 to 33.
[297] TSN taken at the hearing held on February 17, 2021, pp. 34 to 35.

The accused presented the following documentary evidence, which have been admitted by the Court in the Resolution dated June 16, 2021, to wit:

Exhibits	Description
"Exhibit 35"	Judicial Affidavit of the Accused executed and signed before Atty. Pearlito B. Campanilla on 15 December 2015 at Quezon City[298]
"Exhibit 10"	Statement of Income for the year ended December 31, 2008[299]
"Exhibit 19"	BIR Form 2551M for the Monthly Percentage Tax Return for the month of October 2009 showing payment of ₱1,126.80 made by the accused to the BIR[300]
"Exhibit 29"	BIR Form 1701 for the Quarterly Income ax Return for the 3rd Quarter of 2009 showing payment in the amount of ₱556.00 made by the accused to the BIR[301]
"Exhibit 48 and 48-A"	Judicial Affidavit of Mr. Charlito Padul, Accountant of the Accused with the signature of the witness[302]
"Exhibit 36"	Complaint Affidavit with Annexes A to K-2, executed by Shalamar Marangit and Grace Marohomsalic, Revenue Officers of the BIR, dated 13 March 2014, which on the same date was subscribed and sworn to before State Prosecutor Romeo Martin Serranilla, at the City of Manila[303]
"Exhibit 37"	Referral Letter dated March 13, 2014 from the Commissioner of Internal Revenue to the Department of Justice through a letter addressed to Hon. Leila De Lima, Secretary of Justice, for Preliminary Investigation and filing of Information against Agerico Banzon

[298] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 900 to 906.
[299] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 698 to 700.
[300] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1143 to 1144.
[301] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1158 to 1159.
[302] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 1037 to 1055.
[303] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 19 to 25.

	based on the Complaint-Affidavit of Revenue Officers Shalamar Marangit and Grace Marohomsalic of the BIR and the annexes submitted therewith[304]
"Exhibit 38 and Exhibit 38-A"	Preliminary Assessment Notice (PAN) dated August 5, 2015 addressed to Mr. Agerico Banzon and the page where the LBC Receipt and the Postal Registry Receipt show that the PAN was mailed to the accused only on 28 January 2016[305]
"Exhibit 39"	Formal Demand Letter from the BIR to the accused dated August 10, 2016 together with the LBC Receipt and the Postal Registry Return Receipt showing that the same was mailed on October 13, 2016[306]
"Exhibit 40"	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated February 3, 2017 showing that the accused deposited the amount of ₱277,232.43 as payment of Income Tax for 2009 and 2010[307]
"Exhibit 40-1"	BIR Form 0605 Payment Form for Tax Year Ended 2009 for Mr. Agerico Banzon showing voluntary payment of Income Tax in the amount of ₱277,232.43 for taxable years 2008 and 2009[308]
"Exhibit 41"	BIR Form 1701Q for the Quarterly Income Tax Return for the 1st Quarter of 2008 showing payment in the amount of ₱500.00[309]
"Exhibit 42"	BIR Form 1701Q for the Quarterly Income Tax Return for the 2nd Quarter

[304] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 713 to 714.
[305] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 715 to 723.
[306] Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 724 to 733.
[307] The tax period indicated on the BIR Tax Payment Deposit Slip is "12/2009", Docket – Vol. III (CTA Crim. Case No. O-501), *unpaginated.*
[308] The Year Ended on the BIR Form 0605 is "12-December 2000, but the payment specified is VOLUNTARY PAYMT. 2008 & 2009), Docket – Vol. III (CTA Crim. Case No. O-501), p. 1200.
[309] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1201 to 1202.

	of 2008 showing payment in the amount of ₱448.06[310]
"Exhibit 43"	BIR Form 1701Q for the Quarterly Income Tax Return for the 3rd Quarter of 2008 showing payment in the amount of ₱708.96[311]
"Exhibit 44"	BIR Form 1701 for the Annual Income Tax Return for the year 2008 showing payment in the amount of ₱742.96[312]
"Exhibit 45"	BIR Form 2551M for the Monthly Percentage Tax Return for the month of January 2010 showing payment in the amount of ₱1,185.00[313]

THE ISSUE

"Whether or not accused is guilty beyond reasonable doubt of the offenses charged in the Informations."[314]

ARGUMENTS OF THE PARTIES

Prosecution's arguments:

The prosecution strongly asserts in its Memorandum, that the accused is guilty of violating Sections 254 and 255 of the 1997 NIRC, as amended.

The prosecution avers that it has sufficiently proven beyond reasonable doubt the existence of all the elements of the crime charged against the accused under Section 255 of the 1997 NIRC, as amended, i.e., that the accused is a person required to make or file a return; that the accused failed to make or file the return at the time required by law and that the failure

[310] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1203 to 1204.
[311] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1205 to 1206.
[312] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1207 to 1208.
[313] Docket – Vol. III (CTA Crim. Case No. O-501), pp. 1209 to 1210.
[314] Par. 2, JSFI, Docket – Vol. I (CTA Crim. Case No. O-501), p. 304; Pre-Trial Order dated May 10, 2016, Docket- Vol. I (CTA Crim. Case No. O-501, pp. 328-338.

to make or file the return/supply correct and accurate information was willful.

The prosecution likewise contends that the accused willfully attempted to evade or defeat tax in violation of Section 254 of the 1997 NIRC, as amended. It alleges that it was able to establish that there was non-declaration and non-payment of income tax legally due by the accused; and this was accompanied by willfulness or deliberate intent on the part of the accused to evade or defeat the payment of income taxes.

Finally, the prosecution asserts that the accused is civilly liable for the deficiency income tax and VAT for taxable years 2008, 2009 and 2010.

Accused's counter-arguments:

The accused counters that there was no valid assessment of deficiency taxes issued against him because the BIR failed to comply with the due process requirements in the issuance of a deficiency tax assessment.

The accused contends that the PAN and the FAN were prepared only after the cases were already filed in court and after the accused had posted bail. Moreover, the accused claims that apart from the registry receipt and LBC receipt attached to the copy of the PAN and FAN, the prosecution failed to prove that he received the same. The accused also argues that there was no specific date stated in the demand as to when payment should be made.

The accused avers that there was no fraud committed by him in the payment of his taxes as he relied on his accountant in the preparation of his tax returns and the nature and amount of taxes to be paid.

Lastly, the accused further asserts that the prosecution failed to consider the taxes withheld at source by the Provincial Government of Palawan in the computation of the alleged deficiency taxes. According to him, the prosecution did not clearly determine the amount of his tax liabilities because the amounts paid for the 5% Final VAT and the 2% EWT which were withheld at source were not considered in the computation of the alleged deficiency taxes to be paid by the accused to the government.

THE RULING OF THE COURT

This Court has no jurisdiction over CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512 and O-514, and thus, these cases must be dismissed.

The Court will first address the issue of jurisdiction before going into the merits of the case as it is the duty of the courts to consider the question of jurisdiction even though such question is not raised by any of the parties. Courts are bound to take notice of the limits of their authority and, even if such question is neither raised by the pleadings nor suggested by counsel, they may recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing defect, at any stage of the proceedings.[315] Pertinently, the accused's silence produces no effect, for when jurisdiction has not been conferred by law, the accused in a criminal case cannot confer it by express waiver or otherwise.[316]

Jurisdiction has been defined as the power conferred by law upon a judge or court to try a case the cognizance of which belongs to them exclusively and it constitutes the basic foundation of judicial proceedings. The term derives its origin from two Latin words – *"jus"* meaning law and the other, *"dicere"* meaning to declare. The term has also been variably explained to be the power of a court to hear and determine a cause of action presented to it, the power of a court to adjudicate the kind of case before it, the power of a court to adjudicate a case when the proper parties are before it, and the power of a court to make the particular decision it is asked to render.[317]

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[315] *Bureau of Customs vs. The Honorable Agnes VST Devanadera, et al.*, G.R. No. 193253, September 8, 2015.

[316] Refer to *The United States vs. Jimenez*, No. 16388, July 21, 1920.

[317] *Macasaet, et al. vs. The People of the Philippines, et al.*, G.R. No. 156747, February 23, 2005.

This Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[318] Section 7(b)(1) of Republic Act (RA) No. 1125[319], as amended by RA No. 9282[320], provides:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) **Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is **less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.** Any provision of law or the Rules of Court to the contrary notwithstanding, the 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 filling of such civil action separately from the criminal action will be recognized." (Emphases supplied)

A plain reading of the above-quoted provision reveals that this Court has exclusive original jurisdiction involving criminal offenses arising from violation of the 1997 NIRC, as amended or Tariff and Customs Code (TCC) and other laws administered by the BIR and Bureau of Customs, provided that the principal amount of taxes and fees, exclusive of charges and penalties claimed is at least ₱1,000,000.00. On the other hand, where

[318] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.
[319] AN ACT CREATING THE COURT OF TAX APPEALS.
[320] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS.

the principal amount of taxes and fees, exclusive of charges and penalties claimed is less than ₱1,000,000.00 or where there is no specified amount claimed, the case shall be tried by the regular courts and the jurisdiction of this Court shall be appellate.

Jurisdiction is conferred only by the Constitution or by the law in force at the time of the filing of the Information or complaint.[321] Settled is the rule that it is the averments in the Information which characterize the crime to be prosecuted and the court before which it must be tried.[322] Consequently, this Court should only look into the facts alleged in the Information to determine whether the case falls within its jurisdiction. It must be emphasized that it is necessary that the pertinent Information clearly states that the exact principal amount of taxes and fees claimed, is at least One Million Pesos (₱1,000,000.00), and the same is exclusive of charges and penalties.

In these consolidated cases, records show that the prosecution respectively filed the following Informations in CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512, and O-514, pertinent portions of which are respectively quoted, as follows:

<u>CTA Crim. Case No. O-501</u>:

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file value added tax return and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
>
> > 'That on or about October 2008 or within twenty five (25) days following the close of third taxable quarter of 2008, in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole

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[321] *Mobilia Products, Inc. vs. Umezawa, et seq.*, G.R. Nos. 149357 and 149403, March 4, 2005.
[322] *Pangilinan vs. Hon. Court of Appeals, et al.*, G.R. No. 117363, December 17, 1999.

> proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file a VAT return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously failed to file his Value-Added Tax Return for the third taxable quarter of 2008, **in the amount of One Million Three Hundred Ninety Four Thousand Eight Hundred Sixty Eight and 85/100 pesos (Php.1,394,868.85),** <u>**more or less**</u>, exclusive of interest, surcharges and penalties, which willful failure to file such Value Added Tax (VAT) return resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[323] *(Emphasis and underscoring added)*

<u>CTA Crim. Case No. O-502</u>:

"**INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about October 2008 or within twenty five (25) days following the close of third taxable quarter of 2008, in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole

[323] Docket – Vol. 1 (CTA Crim. Case No. O-501), pp. 6 to 8.

> proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value-Added Tax (VAT) imposed for the third taxable quarter for the year 2008, **in the amount of One Million Three Hundred Ninety Four Thousand Eight Hundred Sixty Eight and 85/100 pesos (Php.1,394,868.85), more or less,** exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[324] *(Emphasis and underscoring added)*

CTA Crim. Case No. O-504:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'Failure to Supply Correct and Accurate Information' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 15, 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000 filed with said revenue district office BIR Form No.

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[324] Docket (CTA Crim. Case No. O-502), pp. 6 to 8.

1701, more commonly known as the Annual Income Tax Return, for the taxable year 2008, knowing fully well that he is required by the law and by the rules and regulations to Seventeen Million Seven Hundred Ninety-One Thousand Seven Hundred Seventy Six pesos and 85/100 (Php.17,791,776.85), as payment for his construction services rendered to the Provincial Government of Palawan covering the taxable year 2008, which willful failure to supply correct and accurate information tantamount to substantial under-declaration, thus resulting to basic deficiency income tax **in the amount of Five Million Five Hundred Seventy Five Thousand Seven Hundred Sixty One pesos and 84/100 (Php5,575,761.84), more or less,** exclusive of interest surcharge and penalties, to the damage and prejudice of the government.'

CONTRARY TO LAW."[325] *(Emphasis and underscoring added)*

CTA Crim. Case No. O-508:

"**INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat Value Added Tax (VAT) payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about January 2010 or within twenty five (25) days following the close of the fourth taxable quarter of 2009 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this

[325] Docket (CTA Crim. Case No. O-504), pp. 6 to 8.

> Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of Value Added Tax (VAT) imposed for the fourth taxable quarter for the year 2009, **in the amount of One Million Six Hundred Seventy Four Thousand pesos (Php.1,674,000.00),** **<u>more or less</u>**, exclusive of interest, surcharges and penalties, which willful failure to declare and pay such tax resulted in the non-payment of value added tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[326] *(Emphasis and underscoring added)*

<u>CTA Crim. Case No. O-511</u>:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat income tax payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 15, 2010 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then

[326] Docket (CTA Crim. Case No. O-508), pp. 6 to 8.

> and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of income tax imposed for the taxable year 2009, **in the amount of Ten Million Four Hundred Fifty Eight Thousand One Hundred Twenty Six Pesos and 63/100 (Php.10,458,126.63), more or less**, exclusive of interest, surcharges and penalties, which willful failure to declare the income earned during said taxable year resulted in the evasion of payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[327] *(Emphasis and underscoring added)*

CTA Crim. Case No. O-512:

"**INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful failure to file income tax return and pay tax' under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 15, 2010 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, knowing fully well that he is required by the law and by the rules and regulations to file an income tax return and pay tax within the period mentioned therein, did then and there, willfully, unlawfully and feloniously

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[327] Docket (CTA Crim. Case No. O-511), pp. 6 to 8.

> fail to file his Income Tax Return and pay tax for the taxable year 2009, **in the amount of Ten Million Four Hundred Fifty Eight Thousand One Hundred Twenty Six pesos and 63/100 (Php10,458,126.63),** **more or less,** exclusive of interest, surcharges and penalties, which willful failure to file such return resulted in the non-payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[328] *(Emphasis and underscoring added)*

CTA Crim. Case No. O-514:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses, **AGERICO L. BANZON**, Owner of Banz Built Construction, of the crime 'willful attempt to evade or defeat income tax payment' under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 15, 2011 in Puerto Princesa City Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, sole proprietor of Banz Built Construction who is a registered taxpayer of Revenue District Office No. 36 and with Tax Identification Number (TIN) 113-296-811-000, did then and there, willfully, unlawfully and feloniously attempt to evade or defeat payment of income tax imposed for the taxable year 2010, **in the amount of Three Million Eight Hundred Five Thousand Pesos (Php.3,805,000.00),** **more or less**, exclusive of interest, surcharges and penalties, which willful

[328] Docket (CTA Crim. Case No. O-512), pp. 6 to 8.

> failure to declare the income earned during said taxable year resulted in the evasion of payment of income tax, to the damage and prejudice of the government of the same amount'.

CONTRARY TO LAW."[329] *(Emphasis and underscoring added)*

It is plain that the foregoing Informations respectively indicate the amount of tax being claimed, but is qualified by the phrase "more or less". Relative thereto, it must be emphasized that such phrase is an unacceptable qualification of the principal amount of tax involved, as it fails to accurately state the amount of tax being claimed, and because the said phrase implies that the amount can be below or lower than ₱1,000,000.00.

To stress, to vest jurisdiction upon this Court, a vital allegation in the information, that is – that the *"principal amount of taxes and fees"* is at least ₱1,000,000.00, exclusive of charges and penalties – must be unequivocal and unmistakable. In other words, the amount must be fixed and definite, leaving no doubt as to the jurisdiction of this Court. This was affirmed in the Resolution of the Court in the case of *People of the Philippines vs. Henry Sy,*[330] and we quote:

> "Bearing in mind therefore the jurisdiction of a court over a criminal case is determined by the allegations in the Complaint or Information, it is necessary that the Information filed with this Court clearly **state that the exact principal amount of taxes and fees claimed, is at least One Million Pesos (Php1,000,000.00), and the same is exclusive of charges and penalties."**

Correspondingly, the Court finds the above Informations in CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512 and O-514 suffer from fatal infirmities which deprived the Court of jurisdiction to take cognizance thereof. Such being the case, the said cases must perforce be dismissed on jurisdictional grounds.

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[329] Docket (CTA Crim. Case No. O-514), pp. 6 to 8.
[330] Court Resolution in CTA Crim Case No. O-683 dated January 25, 2019.

As regards the remaining cases, *i.e.*, CTA Crim. Case Nos. O-503, O-505, O-506, O-507, O-509, O-510, and O-513, the same may be classified according to the crime charged. CTA Crim. Case Nos. O-503, O-505, and O-510, are for violations of Section 254 of the NIRC of 1997, as amended; while CTA Crim. Case Nos. O-506, O-507, O-509, and O-513, are for violations of Section 255 of the same Code.

Before looking into the merits of the said remaining cases, however, it is apt to primarily address the accused's arguments that there was no valid assessment of deficiency taxes against the accused, and that the BIR failed to comply with the due process requirement in the issuance of a deficiency tax assessment, before the filing of the instant criminal cases.

A deficiency tax assessment is not necessary before a criminal case may be filed. Thus, there was no violation of due process, even when no assessment has been issued, prior to the filing of the said criminal case.

The accused points out that no PAN, FAN or FLD, were issued to the accused before the filing of the complaint, and that said documents were only issued thereafter which is a clear violation of his right to due process.

The accused's reasoning is specious.

There is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the 1997 NIRC, as amended, as held by the Supreme Court in *Ungab vs. Cusi, Jr., et al.,*[331] and we quote:

> "xxx. What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a

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[331] G.R. Nos. L-41919-24, May 30, 1980.

> criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. **While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.**" (Emphasis supplied)

The foregoing was affirmed in *Adamson, et al. vs. Court of Appeals, et al., etseq.*,[332] wherein the Supreme Court held:

> "...the applicability of *Ungab v. Cusi* [333] is evident to the cases at bar. In this seminal case, this Court ruled that **there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him.** It quoted Merten's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus:
>
>> **An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.**" *(Emphasis supplied)*

Furthermore, under Sections 254 and 255 of the 1997 NIRC, as amended, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the said Code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.[334]

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[332] G.R. Nos. 120935 & 124557, May 21, 2009.
[333] Nos. L-41919-24, May 30, 1980.
[334] *Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018.

Moreover, in *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*,[335] the Supreme Court ruled as follows:

> "Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. **This is incorrect, because Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings may be commenced *without assessment.* Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously.** In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. **This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.**
>
> Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. **We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule.** Private respondents failed to show that they are entitled to an exception. Moreover, **the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment."** (Emphases supplied).

The foregoing pronouncements are supported by Sections 222(a) and 205 of the 1997 NIRC, as amended, *viz.*:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a false and fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or **a proceeding in court for the collection of such tax may be filed without assessment,** at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially

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[335] G.R. No. 128315, June 29, 1999.

> taken cognizance of in the civil or criminal action for the collection thereof." *(Emphasis and underscoring added)*
>
> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — **The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:**
>
> (a) By distraint of goods, chattels or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
>
> (b) **By** civil or **criminal action.**
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: xxx." (Emphases supplied)

Based on the foregoing provisions, it is clear that in the case of a false and fraudulent return with intent to evade tax or of failure to file a return, a proceeding in court, either by civil or criminal action, for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[336] the Supreme Court ruled in this wise:

> "The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) **summary administrative remedies**, such as the distraint and/or levy of taxpayer's property; and/or (b) **judicial remedies**, such as the filing of a criminal or civil action against the erring taxpayer.
>
> Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes**, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The**

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[336] G.R. Nos. 197945 and 204119-20, July 9, 2018.

rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x **It is a step preliminary, but essential** to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.

xxx xxx xxx

Unlike summary administrative remedies, the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment. Sections 318[337] and 319(a)[338] of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.

A judicial action for the collection of a tax is begun: (a) by the **filing of a complaint** with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by **filing an answer to the taxpayer's petition for review** wherein payment of the tax is prayed for." (*Emphases and underlining supplied*)

It is clear from the foregoing that the government's power to enforce the collection through judicial action, whether civil or criminal, is not conditioned upon a previous valid assessment.

Correspondingly, the present criminal cases need not be preceded by a valid assessment. Thus, prior to the filing of the said cases, the accused's right to due process is not violated, notwithstanding the absence of valid tax assessments or even when the said tax assessments were issued and the same were not received by the taxpayer.

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[337] Now Section 203 of the NIRC of 1997, as amended.

[338] Now Section 222(a) of the NIRC of 1997, as amended.

Be that as it may, the collection of the subject taxes, if warranted under the premises, shall pertain only to those covered by CTA Crim Cases O-503, O-505, O-510, O-506, O-507, O-509, and O-513 – the cases which were not dismissed on jurisdictional grounds.

For CTA Crim. Case Nos. O-503, O-505, and O-510 - The prosecution failed to establish the guilt of the accused beyond reasonable doubt of the offenses under Section 254 of the 1997 NIRC, as amended.

The prosecution charged the accused with violation of Section 254 of the 1997 NIRC, as amended, to wit: (a) willful attempt to evade or defeat VAT payment for the second taxable quarter of 2009 and first taxable quarter of 2010 (CTA Crim. Case Nos. O-505 and O-510, respectively), and willful attempt to evade or defeat income tax payment for taxable year 2008 (CTA Crim. Case No. O-503).

Section 254 of the 1997 NIRC, as amended, provides as follows:

> "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 of not less than Thirty thousand pesos (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." (Emphasis supplied)

The following elements must be established under Section 254 of the 1997 NIRC, as amended, to wit:

1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the tax;

2. There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

3. Such attempt to evade or defeat tax or the payment thereof is willful.

<u>First Element</u> – The accused is liable to pay tax under the 1997 NIRC, as amended.

Relative to the accused's income tax liability, Section 24 of the 1997 NIRC, as amended by RA No. 9504, reads as follows:

"SEC. 24. *Income Tax Rates.* –

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –

(1) An income tax is hereby imposed;

(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;

(b) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection (C) of Section 23 hereof; and

(c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines.

(2) *Rates of Tax on Taxable Income of Individuals.* – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over P10,000..............................	5%
Over P10,000 but not over P30,000....	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000....	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000....	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,000..	P22,500+25% of the excess over P140,000
Over 250,000 but not over P500,000....	P50,000+30% of the excess over P250,000
Over P500,000......................................	P125,000+32% of the excess over P500,000

For married individuals, the husband and wife, subject to the provision of Section 51(D) hereof, shall compute separately their individual income tax based on their respective total taxable income: *Provided*, That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income.

xxx xxx xxx."

Anent the accused's VAT liability, Sections 105 and 108(A)of the 1997 NIRC, as amended by RA No. 9337, provide as follows, to wit:

"SEC. 105. *Persons Liable*. - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. –

(A) *Rate and Base of Tax*. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%)· or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).[339]

xxx xxx xxx."

Thus, pursuant to the foregoing provisions and given that the accused is the sole proprietor of Banz Built Construction, which received certain payments from the Province of Palawan for various construction projects,[340] and is a registered taxpayer of RDO No. 36 – Puerto Princesa City, with TIN 113-296-811-000, the said accused is deemed to be subject to income tax and VAT, and consequently, is required to file his tax returns, and pay the corresponding taxes. His Certificate of Registration (BIR Form No. 2303) subjects him to income tax, VAT and withholding taxes. Thus, the prosecution has shown compliance with the said first element under Section 254 of the 1997 NIRC, as amended.

Second and Third Elements – There is no willful attempt to evade or defeat payment of taxes.

"Tax evasion" is a term that connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes.[341] Tax evasion is a scheme used outside of those lawful means. It connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes. To constitute tax evasion, the following factors must be proven: (1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and (3) a course of action or failure of action

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[339] Effective February 1, 2006, the VAT rate was increased to 12% (Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006).
[340] Exhibits "P-33" and "P-34", Docket (CTA Crim. Case No. O-501) – Vol. 2, pp. 692 to 693.
[341] *Yutivo Sons Hardware Company vs. Court of Tax Appeals, et al.*, G.R. No. L-13203, January 28, 1961.

which is unlawful. In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation.[342]

The act of filing a fraudulent return must be intentional and not attributable to mistake, carelessness, or ignorance.[343] In determining whether the return filed is false or fraudulent, jurisprudence has consistently held that fraud is never imputed. The Court has refrained from sustaining findings of fraud upon circumstances which, at most, create only suspicion. The mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[344]

Fraud is a question of fact that should be alleged and duly proven. The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed.[345]

Thus, for there to be violation of Section 254 of the 1997 NIRC, as amended, it is necessary for the prosecution to prove the existence of fraud thru the use of pretenses and forbidden devices committed or done by the accused to lessen or defeat taxes, by clear and convincing evidence.

The prosecution, however, failed to discharge such burden of proof. Apart from the prosecution's bare allegation that the accused "willfully, unlawfully and feloniously attempted to evade or defeat payment of" income tax for taxable year 2008,[346] and VAT for the second taxable quarter of 2009[347] and first taxable quarter of 2010[348], the prosecution did not point out any other detail or unlawful scheme which

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[342] *Commissioner of Internal Revenue vs. The Hongkong Shanghai Banking Corporation – Philippine Branch*, G.R. No. 227121, December 9, 2020.

[343] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[344] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[345] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

[346] *Amended Information*, Docket (CTA Crim. Case No. O-503), pp. 90 to 92.

[347] *Amended Information*, Docket (CTA Crim. Case No. O-505), pp. 89 to 92.

[348] Docket (CTA Crim. Case No. O-510), pp. 91 to 93.

establishes actual fraud committed by the accused. Simply put, the prosecution was not able to substantiate its allegation of the accused's supposed attempt to evade or defeat payment of the said taxes.

Moreover, as regards the VAT liability of the accused, it must be noted that Section 4.112-2(a) of Revenue Regulations (RR) No. 16-2005[349], as amended by RR No. 4-2007[350], reads as follows:

> "SEC. 4.114-2. ***Withholding of VAT on Government Money Payments*** *and Payments to Non-Residents.* —
>
> (a) **The government or any of its political subdivisions**, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) **shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT** pursuant to Secs. 106 and 108 of the Tax Code, **deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.**
>
> **The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller.** The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost." (Emphases supplied)

Based on the foregoing provision, it is clear that for government money payments, the concerned government entity is mandated to deduct and withhold a final VAT due at the rate of five percent (5%) on the gross amount thereof, for each purchase of goods and/or of services before making such payment. Moreover, it is plain that the said five percent (5%) final VAT withholding rate represents the net VAT payable of the seller.

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[349] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

[350] SUBJECT: Amending Certain Provisions of Revenue Regulations N. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

In this case, pursuant to the testimonies of the prosecution's witnesses, it was established that the VAT, at the rate of 5%, was deducted or withheld from the payments of the Province of Palawan to the accused in the amounts, *inter alia*, of ₱14,041,864.75 for the second quarter of 2009, and ₱12,000,000.00 for the first quarter of 2010; and that the withheld VAT was remitted to the BIR.[351] Correspondingly, the accused could not have used pretenses and forbidden devices to lessen or defeat the payment of VAT for the second taxable quarter of 2009 and the first taxable quarter of 2010, since the amount withheld at the VAT rate of 5% on the said payments already represents the net VAT payable of the accused. In other words, the VAT liability of the accused has been satisfied insofar as the accused's transactions with the Province of Palawan for the concerned periods.

In sum, the prosecution has not shown proof beyond reasonable doubt that the accused is guilty of the crime penalized under Section 254 of the 1997 NIRC, as amended, for the said periods.

Proof beyond reasonable doubt imposes upon the prosecution the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.[352]

Correspondingly, for CTA Crim. Case Nos. O-503, O-505, and O-510, the accused must be acquitted.

However, it must be emphasized that the criminal case could not operate to discharge the accused from the duty to pay the tax, since that duty is imposed by statute prior to and independently of any attempts on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information,

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[351] Refer to TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 610, vis-à-vis Exhibit "P-34", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 693.

[352] *Daayata, et al.* vs. *People of the Philippines*, G.R. No. 205745, March 8, 2017.

nor is it a mere civil liability derived from a crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[353]

Considering that it is shown that the accused has already satisfied his VAT liability for the second taxable quarter of 2009 (CTA Crim Case No. O-505) and the first taxable quarter of 2010 (CTA Crim Case No. O-510) via the withholding VAT mechanism on government money payments, only the accused's income tax liability for taxable year 2008 (CTA Crim Case No. O-503) must perforce be computed, *viz.*:

Net Income for taxable year 2008	₱ 17,615,130.68
Less: Personal Exemption	74,000.00
Taxable Income	17,541,130.68
Tax Due:	
₱125,000.00 + [32% x (₱17,541,130.68 – ₱500,000.00)]	5,578,161.82
Less: Tax Credits/Payments	
Creditable Tax Withheld (2% of Income Payments)	355,835.54[354]
Tax Payments for First Three Quarters	1,657.02
Annual Payment	742.96
Total	358,235.52
Basic Deficiency Income Tax	**₱ 5,219,926.30**
Surcharge (50%)	2,609,963.15
Deficiency Interest (20%) until December 31, 2017	
From April 16, 2009 to December 31, 2017 (₱5,219,926.30 x 20% x 3,182 days/365 days)	9,101,263.29
Total	**₱ 16,931,152.74**
Delinquency Interest (20%) until December 31, 2017	
From April 16, 2009 to December 31, 2017 (₱16,931,152.74 x 20% x 3,182 days/365 days)	29,520,508.50
Total Amount Due as of December 31, 2017	**₱ 46,451,661.24**

In addition, the accused is liable to pay delinquency interest at the rate of 12% on the total unpaid deficiency income tax of ₱16,931,152.74, as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 (TRAIN) and as implemented by RR No. 21-2018.

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[353] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962; *Republic of the Philippines vs. Patanao*, G.R. No. L-22356, July 21, 1967.

[354] 2% of ₱17,791,776.85.

CTA Crim. Case Nos. O-506, O-507, O-509, and O-513 - The prosecution was able to prove the accused's guilt beyond reasonable doubt for the offenses under Section 255 of the 1997 NIRC, as amended.

The prosecution charged the accused with violation of Section 255 of the 1997 NIRC, as amended, to wit: (a) for willful failure to file his VAT return and pay tax for the second and fourth taxable quarters of 2009, and the first taxable quarter of 2010 (CTA Crim. Case Nos. O-506, O-507, and O-509, respectively); and (b) for willful failure to file his AITR and pay the corresponding tax for taxable year 2010 (CTA Crim. Case No. O-513).

Section 255 of the 1997 NIRC, s amended, provides 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." (Emphases supplied)

Based on the foregoing provision, for one to be convicted for the offense of willful failure to file return, pay tax and failure to supply correct and accurate information, it necessitates the concurrence of the following elements, to wit:

1. The accused is a person required under the NIRC or rules and regulations to pay any tax or make a return or supply correct and accurate information;

2. The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations; and

3. Such failure to pay such tax, make such return or supply correct and accurate information is willful.

First Element – The accused is a person required under the NIRC or rules and regulations to pay any tax, make a return or supply correct and accurate information.

As already pointed out earlier, the accused is liable to pay income tax under Section 24 of the 1997 NIRC, as amended by RA No. 9504, and VAT under Sections 105 and 108(A) of the same Code, as amended by RA No. 9337. Thus, it is shown that the first element is fulfilled by the prosecution.

Second Element – The accused failed to file his ITR and VAT Returns and pay the corresponding taxes thereon, at the time or time required by law or rules and regulations.

As a consequence of his income, the accused is mandated to file the pertinent tax returns and pay the corresponding taxes (if any), pursuant to the following provisions of the 1997 NIRC, as amended, to wit:

Section 51, 1997 NIRC, as amended:

"SEC. 51. *Individual Return.* –

(A) *Requirements.* –

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

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

(b) A nonresident citizen – on his income derived from sources within the Philippines;

(c) A nonresident alien – on his income derived from sources within the Philippines; and

(d) A nonresident alien engaged in trade or business in the Philippines – on his income derived from sources within the Philippines.

(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.

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Section 114, NIRC of 1997, as amended by RA No. 9337:

"SEC. 114. *Return and Payment of Value-Added Tax.* –

(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

xxx xxx xxx

(B) *Where to File the Return and Pay the Tax.* - Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal

> Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register."

Based on the foregoing provisions, the accused, being liable for income tax and VAT, is required to file his AITR on or before the 15th day of April each year covering the said income for the preceding taxable year, and quarterly VAT returns within twenty-five (25) days following the close of each taxable quarter; and pay corresponding taxes thereon, if any.

It is undisputed that the accused through his business, Banz Built Construction, received or earned the following: (1) ₱14,041,864.75 in the second quarter of 2009, (2) ₱15,000,000.00 in the fourth quarter of the same year, (3) ₱12,000,000.00 in the first quarter of 2010, from the Province of Palawan regarding various construction projects.[355] Thus, the accused should have filed his Quarterly VAT Returns for the said quarters, respectively, and the AITR for 2010, declaring the said income or gross receipts, and paying the pertinent taxes, if still due.

The prosecution has presented convincing evidence to show that the accused has not filed any of the required tax returns (*i.e.*, Quarterly VAT Returns and AITR) for the above-stated periods.[356] As a corollary, the accused has not shown evidence to the contrary.

Furthermore, anent the obligation of the accused to file his AITR of 2010, his defense that the Provincial Government already withheld certain income payments is untenable. This is so because Section 2.57 (B) of RR No. 2-98[357] provides:

> "Section 2.57. *Withholding of Tax at Source.* –
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> xxx xxx xxx

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[355] Exhibit "P-34", Docket - Vol. 2 (CTA Crim. Case No. O-501), p. 693.

[356] Exhibits "P-32", "P-32-a", "P-32-b", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 689 to 691; Exhibit "P-36", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 695.

[357] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

> (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 an 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." (Emphasis supplied)

In view of the foregoing disquisitions, it is clear that the accused failed to file his AITR for taxable year 2010, and Quarterly VAT Returns for the second and fourth taxable quarters of 2009, and first taxable quarter of 2010; and pay the corresponding income tax for taxable year 2010. Thus, this Court finds that the second element for the crime under Section 255 of the NIRC of 1997, in relation to Sections 51 and 114 of the same Code, as amended, has likewise been fulfilled by the prosecution.

<u>Third Element</u> – The accused's failure to file ITR and VAT Returns and pay the corresponding taxes thereon, at the time or time required by law or rules and regulations, is willful.

The word "willful", or its variant *"wilful",* means premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence.[358]

In this case, the accused did not dispute the existence of his receipt of the subject revenues for taxable years 2009 to 2010. In fact, nowhere in his Judicial Affidavit and his testimony shows that he denied the receipt of the subject income from the Province of Palawan. Still, the accused failed to file the required tax returns and pay taxes corresponding to the subject taxable periods. It also failed to offer any legitimate

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[358] Refer to *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996.

reason for its failure to do so, aside from its convenient excuse that he heavily relied on his accountant.

The accused alleges that he completely relied on his accountant on all tax matters pertaining to his construction business. He testified that his accountant did all the filing, and his participation was only to provide the needed documents and pay the taxes in accordance with the instructions of his accountant.[359] He even stated that he had given full authority in favor of his wife and secretary to sign the tax returns on his behalf.[360]

It is significant to note that aside from the fact that he took a civil engineering course, the accused has testified that he has also been in the construction business for more than ten (10) years. We quote portions of his testimony, to wit:

"ATTY. DELA PAZ

Q Mr. Witness, what is your highest educational attainment?

A College level.

ATTY. DELA PAZ

Q What was your course?

MR. BANZON

A Civil Engineering.

ATTY. DELA PAZ

Q Where did you graduate Mr. Witness?

MR. BANZON

A Far Eastern University, undergraduate.

ATTY. DELA PAZ

Q How long have you been a contractor Mr. Witness?

MR. BANZON

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[359] TSN taken at the hearing held on March 13, 2019, pp. 26 to 27.
[360] TSN taken at the hearing held on March 13, 2019, p. 16.

A I cannot remember but I was Vice-President of ALB Construction Corporation which is a family corporation. Then I had my Firm, Banz Built Construction, I think that was 1992.

ATTY. DELA PAZ

Q So, you were saying at least you are almost ten (10) years and above from the business?

MR. BANZON

A On my own, but with ALB maybe another ten (10). Then I had some experience in Saudi also as a civil inspector in Shoda Petrostar Ltd., a Japanese firm who constructed the King Fahd International Airport."[361]

The accused, a literate person, being of age and an experienced businessman, should have known his tax obligations under the law as well as the consequences of any violations thereof. Furthermore, he is supposed to have, at least, acquired familiarity with the duty of filing tax returns and paying the taxes due as a result of being engaged in the construction business. Besides, it is presumed that a person intends the ordinary consequences of his or her voluntary act and a person takes ordinary care of his or her concerns, respectively, pursuant to Section 3(c) and (d) of Rule 131 of the Revised Rules on Evidence. Notably, the accused was able to file his AITR for taxable year 2008, and this Court sees no valid excuse for him not filing his AITR in the succeeding years, including taxable year 2010.

The Court finds unacceptable the accused's defense that he heavily relied on his accountant on all matters concerning his tax obligations because this is indicative of accused's evident lack of concern and wanton disregard of his tax responsibilities to the government.

To the mind of this Court, the accused's alleged complete reliance on the supposed expertise of his accountant to determine which tax returns should be filed, and the nature of the taxes to be paid is a classic and common defense invoked by persons accused of crimes under Section 255 of the 1997

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[361] TSN taken at the hearing held on March 13, 2019, pp. 8 to 9.

NIRC, as amended. The Court has previously found such "deliberate ignorance"' and "conscious avoidance" to be sufficient to characterize the act as "willful" in contemplation of Section 255 of the 1997 NIRC, as amended.[362]

As an experienced business person, and as a successful one at that, in terms of the substantial revenues he received from the Province of Palawan, the accused cannot be perceived as one who is oblivious to the consequences of his actions or omissions. For sure, since ignorance of the law excuses no one from compliance therewith,[363] the accused is presumed to be aware that his accountant's failure to file the pertinent tax returns and pay the correct amount of taxes may expose him to possible tax assessments, and even criminal prosecution. The accused should have ensured that his accountant performed his duties diligently and that all revenues he received from the Province of Palawan were timely declared to the BIR via the filing of appropriate tax returns, and that all pertinent taxes thereon were duly paid.

In fact, the accused admitted that he was at fault when he never checked with his accountant if the latter had declared or not the subject revenues, to wit:

> "JUSTICE VICTORINO
>
> > If that is your line of thinking why was there a need for you to hire an Accountant when the government already deducted the taxes supposed to be due from the compensation for your services rendered, if that is your line of thinking?
>
> MR. BANZON
>
> > Well, your Honors, there are some obligation on the Accountant to have the filing Monthly, Quarterly or whatever, so that I depend on my Accountant. But knowing that the government have remitted this to the BIR using these forms, what I know, my Accountant should follow this collection or this deduction that need to be filed, **that was my fault that I never check** *(sic)* **with my Accountant if she had declared this or not**."[364] (Emphasis supplied)

[362] People vs. Garcia, O-572, O-573 and O-610, February 15, 2021

[363] Article 3, Civil Code of the Philippines.

[364] TSN taken at the hearing held on March 13, 2019, p. 28.

Such statements constitute judicial admissions and, thus, binding upon the accused. By not checking with his Accountant whether the subject revenues were declared for tax purposes *vis-à-vis* the knowledge of the possible tax assessments and/or criminal prosecution that may arise from such non-declaration and the non-payment, the accused is deemed to have acted willfully, *i.e.*, with intent or with indifference to the natural consequences, when no Quarterly VAT Returns were filed for the second and fourth quarters of 2009, and first quarter of 2010, and no Annual ITR for 2010.

Thus, the prosecution was able to establish fulfillment of the third element for the crime under Section 255 of the 1997 NIRC, as amended. Correspondingly, for CTA Crim. Case Nos. O-506, O-507, O-509, and O-513, the conviction of the accused is in order.

However, it must be pointed out that no VAT liability shall be imposed on the accused for the second and fourth quarters of 2009, and first quarter of 2010, since the net VAT payable for the said periods has already been satisfied via the withholding of the 5% final VAT, pursuant to the testimony of the prosecution's witness, Ms. Edna R. Maligro.[365]

Nevertheless, since there is no showing that the accused's income tax liability for 2010 has already been satisfied, such income tax liability must still be determined as follows:

Net Income	₱ 12,000,000.00
Less: Personal Exemption	50,000.00
Taxable Income	11,950,000.00
Tax Due:	
₱125,000.00 + [32% x (₱11,950,000.00 – ₱500,000.00)]	3,789,000.00
Less: Tax Credits/Payments	
Creditable Tax Withheld (2% of the Income Payments)	240,000.00[366]
Tax Payment for First Three Quarters	1,408.75
Annual Payment	-

[365] Refer to TSN taken at the hearing held on February 28, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-501), p. 610.

[366] 2% of ₱12,000,000.00.

Total	241,408.75
Basic Deficiency Income Tax	**₱ 3,547,591.25**
Surcharge (50%)	1,773,795.63
Deficiency Interest (20%) until December 31, 2017	
From April 16, 2011 to December 31, 2017 (₱3,547,591.25 x 20% x 2,452 days/365 days)	4,766,407.53
Total	**₱ 10,087,794.41**
Delinquency Interest (20%) until December 31, 2017	
From April 16, 2011 to December 31, 2017 (₱10,087,794.41 x 20% x 2,452 days/365 days)	13,553,573.64
Total Amount Due as of December 31, 2017	**₱ 23,641,368.05**

In addition, accused is liable to pay delinquency interest at the rate of 12% on the total unpaid deficiency income tax of ₱10,087,794.41, as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963 (TRAIN) and as implemented by RR No. 21-2018.

WHEREFORE, in light of the foregoing considerations, the Court rules as follows:

1. CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512 and O-514 are **DISMISSED,** on jurisdictional grounds.

   The respective cash bail bonds of the accused, pertaining to the said cases, are hereby **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

2. In CTA Crim. Case No. O-503, O-505 and O-510, accused Agerico L. Banzon is **ACQUITTED**, for failure of the prosecution to prove his guilt beyond reasonable doubt.

   The respective cash bail bonds of the accused for the said cases are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

3. In CTA Crim. Case Nos. O-513, O-506, O-507 and O-509, accused Agerico L. Banzon is hereby found **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 255 of the 1997 NIRC, as amended, for failure to file the corresponding AITR for taxable year 2010, and pay the corresponding income tax; and for failure to file the pertinent Quarterly VAT Returns for the second and fourth quarters of taxable year 2009, and the first taxable quarter of 2010, respectively. For each of the said criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and is **ORDERED TO PAY** a fine in the amount of ₱10,000.00, with subsidiary imprisonment in case he has no property with which to meet such fine, pursuant to Section 280 of the 1997, NIRC, as amended.

4. The accused is **ORDERED TO PAY** the aggregate amount of ₱8,767,517.55, representing basic deficiency income tax, and 50% surcharge imposed under Section 248(B) of the 1997 NIRC, as amended, 20% deficiency interest and 20% delinquency interest imposed under Section 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as computed below:

	CTA Crim. Case No. O-503	**CTA Crim. Case No. O-513**	**TOTAL**
	(Income Tax for Taxable Year 2008)	(Income Tax for Taxable Year 2010)	
Net Income	₱ 17,615,130.68	₱ 12,000,000.00	
Less: Personal Exemption	74,000.00	50,000.00	
Taxable Income	17,541,130.68	11,950,000.00	
Tax Due:			
₱125,000.00 + [32% x (₱17,541,130.68 – ₱500,000.00)]	5,578,161.82		
₱125,000.00 + [32% x (₱11,950,000.00 – ₱500,000.00)]		3,789,000.00	
Less: Tax Credits/Payments			
Creditable Tax Withheld (2% of Income Payments)	355,835.54[367]	240,000.00[368]	
Tax Payments for the First Three Quarters	1,657.02	1,408.75	

[367] 2% of ₱17,791,776.85.

[368] 2% of ₱12,000,000.00.

Annual Payment	742.96	-	
Total	358,235.52	241,408.75	
Basic Deficiency Income Tax	**₱ 5,219,926.30**	**₱ 3,547,591.25**	**₱ 8,767,517.55**
Surcharge (50%)	2,609,963.15	1,773,795.63	4,383,758.78
Deficiency Interest (20%) until December 31, 2017			
From April 16, 2009 to December 31, 2017 (₱5,219,926.30 x 20% x 3,182 days/365 days)	9,101,263.29		
From April 16, 2011 to December 31, 2017 (₱3,547,591.25 x 20% x 2,452 days/365 days)		4,766,407.53	13,867,670.82
Total	**₱ 16,931,152.74**	**₱ 10,087,794.41**	**₱ 27,018,947.15**
Delinquency Interest (20%) until December 31, 2017			
From April 16, 2009 to December 31, 2017 (₱16,931,152.74 x 20% x 3,182 days/365 days)	29,520,508.50		
From April 16, 2011 to December 31, 2017 (₱10,087,794.41 x 20% x 2,452 days/365 days)		13,553,573.64	43,074,082.14
Total Amount Due as of December 31, 2017	**₱ 46,451,661.24**	**₱ 23,641,368.05**	**₱ 70,093,029.29**

In addition, accused is liable to pay delinquency interest at the rate of 12% on the total unpaid deficiency income tax of ₱27,018,947.15, as determined above, or equivalent to ₱8,882.94[369] per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963 (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[369] ₱27,018,947.15 times 12% divided by 365 days.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case Nos. O-501 to O-514**
	Members:
- versus -	DEL ROSARIO, *P.J., Chairperson,* MANAHAN, and REYES-FAJARDO, *JJ.*
AGERICO L. BANZON, as owner of Banz Built Construction, Accused.	Promulgated: JUN 0 1 2022 ; 8:51 a.m.

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CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in: (i) dismissing CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512 and O-514 on jurisdictional grounds; and, (ii) acquitting the accused Agerico L. Banzon in CTA Crim. Case Nos. O-503, O-505 and O-510 for failure of the prosecution to prove his guilt beyond reasonable doubt.

With due respect, I dissent in the *ponencia's* findings that accused is criminally liable in CTA Crim. Case Nos. O-506, O-507, O-509 and O-513, and in imposing civil liability in CTA Crim. Case Nos. O-503 and O-513.

Criminal Liability

While I agree that accused is required under the National Internal Revenue Code (NIRC) of 1997, as amended, to file his Quarterly Value Added Tax (VAT) Returns for the 2nd and 4th quarters of taxable year 2009 and the 1st quarter of taxable year 2010, and his 2010 Annual

Income Tax Return (ITR), I submit, however, that his failure to file the same was **not willful**.

Stated otherwise, in my view, the prosecution failed to prove beyond reasonable doubt that accused willfully failed to file his Quarterly VAT Returns for the 2nd and 4th quarters of taxable year 2009 and the 1st quarter of taxable year 2010, and his 2010 Annual ITR.

Willful in the tax crimes statutes means voluntary, intentional violation of a known legal duty, and bad faith or bad purpose need not be shown.[1] An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, **with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.**[2]

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by circumstantial evidence alone.[3] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof. **The pieces of evidence must be consistent with the hypothesis that the respondents were probably guilty of the crime and at the same time inconsistent with the hypothesis that they were innocent, and with every rational hypothesis except that of guilt.** Circumstantial evidence is sufficient, therefore, if: (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 is such as to produce a conviction beyond reasonable doubt.[4]

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[1] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see *U.S. vs. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

[2] Black's Law Dictionary, 5th ed., p. 1434.

[3] *United States vs. Grumka*, 728 F.2d 794, 796-97 (6th Cir. 1984); *United States vs. Gleason*, 726 F.2d 385, 388 (8th Cir. 1984); *United States vs. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984).

[4] *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.

Accused claims that his failure to file the subject Quarterly VAT Returns and his 2010 Annual ITR was not willful and deliberate as he fully relied on his accountant in the preparation and filing of his tax returns.

Accused admitted being fully aware that the taxes due in government projects were deducted/withheld by the government before he received the actual payment for the services he rendered. He further believed that the taxes withheld on the payments made to him by the Provincial Government of Palawan already represent the taxes due him from his transactions with the former.

Prescinding from the foregoing, it thus appears that the accused, who is neither an accountant nor a tax lawyer, was of the mistaken, but honest, notion that it was not necessary for him to file Quarterly VAT Returns and Annual ITR as the taxes due on his transactions with the government had been withheld. This is not strange or unusual. The mere fact that the accused is an undergraduate of civil engineering does not make him truly capable of understanding taxation, with all its intricacies, including the obligation to file various tax returns on different dates and comply with numerous Bureau of Internal Revenue (BIR) reportorial requirements.

The operation of business itself requires focus and expertise in diverse and multifarious fields, including human relations, labor management, cost-benefit analysis, engineering, technical and architectural decisions; and accounting or tax management is just one of them. It is precisely for this reason that, like any other businessman, the accused hired an accountant to address tax matters for him. It would then be the height of injustice for the accused to be faulted for relying on his accountant to take charge of all tax compliance requirements, after all, professional accountants are reasonably presumed to possess knowledge, expertise and competence in the performance of their functions.

While it is glaring from the records that the investigation against the accused stemmed from his reported tax violations as per a memorandum issued by the National Investigation Division of the BIR, there is nothing therein which would reveal that the accused was informed or confronted of his alleged failure to file the subject Quarterly VAT Returns and the 2010 Annual ITR, if any, prior to the filing of the complaint with the Department of Justice (DOJ).

Section 6 (B) of the NIRC of 1997, as amended, provides:

on

> "SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) Examination of Returns and Determination of Tax Due. — xxx
>
> (B) Failure to Submit Required Returns, Statements, Reports and other Documents. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> **In case a person fails to file a required return** or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, **the Commissioner <u>shall</u> make** or amend **the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes."** *(Boldfacing and underscoring supplied)*

Upon discovery of the accused's failure to file VAT returns and Annual ITR, the then CIR immediately referred the case to the DOJ instead of performing her mandatory duty of making the accused's Quarterly VAT Returns and Annual ITR from her own knowledge and from such information which she obtained at that time from the Provincial Government of Palawan. Such non-performance of a mandatory duty or nonfeasance, aside from being itself actionable, prevented the BIR from discerning the accused's real intent relative to his failure to file the subject Quarterly VAT Returns and the 2010 Annual ITR.

Had the then CIR performed her mandatory duty under Section 6 of the NIRC of 1997, as amended, and confronted the accused with the Quarterly VAT Returns and Annual ITR that she herself, as the then CIR should have prepared, and subsequently required the accused to pay income tax due thereon, the accused's attitude or behavior towards the CIR's demand would have confirmed accused's intention. Stated otherwise, the willful intent of the accused to violate the provisions of the NIRC of 1997, as amended, could have been more appropriately ascertained if, after being told of what he was supposed to have done, still refused or failed to act thereon.

Based on the foregoing, I submit that the key element of willfulness on the part of the accused in not filing his Quarterly VAT Returns and Annual ITR was not adequately proven. Truly, the totality of circumstances *vis-à-vis* accused's behavior and lack of understanding of his tax compliance requirements leave reasonable doubt as to his culpability.

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on its relative strength as against that of the defense. Should the prosecution fail to discharge its burden, as in the cases at bar, the acquittal of the accused in all the charges follows as a matter of course.[5]

In sum, I find that the prosecution failed to establish the guilt of the accused beyond the required reasonable doubt in in CTA Crim. Case Nos. O-506, O-507, O-509 and O-513. Thus, his acquittal from the charges necessarily follows.

Civil Liability

The *ponencia* finds the accused liable for the payment of deficiency income tax for the years 2008 and 2010, albeit the Informations (in CTA Crim. Case Nos. O-503 and O-513) against him do not state that there was failure on his part to pay his deficiency income tax for 2008 and 2010 **pursuant to a final and executory assessment**.

On this point, with due respect, I again dissent.

Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,*[6] the following pronouncements have become doctrinal:

1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case**;

2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding. Since the civil liability is not deemed included in the criminal

[5] *Capistrano Daayata et al., vs. People of the Philippines*, G.R. No. 205745, March 8, 2017.
[6] G.R. No. 222837, July 23, 2018.

action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines vs. Patanao*[7]);

3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime.** (*Id.*);

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the **collection** of unpaid customs duties and taxes **cannot be simultaneously instituted and determined in the same criminal proceedings** (citing *Proton Pilipinas Corp. vs. Republic of the Phils.*[8]).

5. **During the pendency of the tax evasion case, BIR is not precluded from issuing an FDDA.** In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**

Patanao, supra, is explicit anent the incongruity of the factual premises and foundation principles of criminal cases under the Penal Code *vis-à-vis* criminal cases under the NIRC, *viz.*:

> "In applying the principle underlying the civil liability of an offender under the Penal Code to a case involving the collection of taxes, the court *a quo* fell into error. The two cases are circumscribed by factual premises which are **diametrically opposed** to each other, and are founded on entirely different philosophies. Under the Penal Code, the civil liability is incurred by reason of the offender's criminal act. Stated differently, **the criminal liability gives birth to the civil**

[7] 127 Phil. 105 (1967).
[8] 535 Phil. 521 (2006).

m

> **obligation such that generally, if one is not criminally liable under the Penal Code, he cannot become civilly liable thereunder. <u>The situation under the income tax law is the exact opposite</u>. Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. <u>The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law</u>**." *(Boldfacing and underscoring supplied)*

With the pronouncements in *Lim Gaw,* the collateral issue to be addressed is: *under what factual and legal scenario may an action for collection of deficiency tax be deemed instituted in a criminal case for violation of Section 254 or Section 255 of the NIRC of 1997, as amended?*

I am of the view that a civil action for collection of tax may be deemed instituted in a criminal case only when the criminal indictment alleges failure to pay tax deficiencies that are incorporated in a **final and executory assessment**. Since Section 205 of the NIRC of 1997, as amended, provides that a civil or criminal action may be availed as modes of collection, it presupposes that there is a final and executory assessment upon which the collection is based.

If the Information does not pertain to an accused's failure to pay a **final and executory assessment** -- the **government cannot convert a criminal proceeding into an assessment proceeding under the NIRC**.

The procedural due process in the issuance of a tax assessment is outlined in Section 228 of the NIRC of 1997, as amended, wherein the taxpayer is given the opportunity to reply to a Preliminary Assessment Notice (PAN), protest a Final Assessment Notice (FAN), appeal to the CIR a decision on the protest by the latter's representative, and ultimately, appeal to the CTA. **There are specified periods within which each stage of the assessment process may be taken. This entire process should not be ignored lest a taxpayer's right to due process is violated.**

Reasonably construed, when Section 222(a) of the NIRC of 1997, as amended, provides that no assessment is required in criminal actions, it simply rationalizes the object of a criminal case, that is -- to penalize the accused-taxpayer - - but not to hold him liable for deficiency taxes as such civil liabilities arise from law, not from crime.

It is worthy to emphasize that the prescriptive period to assess a taxpayer is generally limited to three (3) years. Due process is required in every stage of the assessment. As oft-repeated, to allow collection of deficiency taxes *sans* an assessment in a criminal case which prescribes after five (5) years[9] tramples upon the right to refute an assessment of deficiency taxes in accordance with the process outlined in Section 228 of the NIRC of 1997, as amended. In a sense, Section 228, *supra*, can totally be ignored and its provisions rendered nugatory. **Worse, the failure to assess a taxpayer within the prescriptive period is unreasonably "cured" by the mere filing of a criminal case.**

The provision of Section 205 of the NIRC of 1997, as amended, stating that upon conviction, tax liability should be imposed, must be read in conjunction with the provision on collection *via* criminal action. Indeed, where the criminal action is instituted for **failure to pay tax** based on a final and executory FAN, the tax deficiency mentioned therein must be imposed. **After all, in such scenario, the tax liability of a taxpayer has been determined consistent with the administrative process thereon, with due regard to the remedies and rights which the taxpayer was entitled to.**

Stated differently, under Section 205 of the NIRC of 1997, as amended, a delinquent tax may be **collected** by criminal action in Court. When a criminal case under Section 254 or Section 255 of the NIRC of 1997, as amended, is instituted for the purpose of collecting a deficiency tax assessment that has **become final, executory and demandable, the civil liability arising from crime is the deficiency tax contained in the final and executory deficiency tax assessment**. This is the **only** instance when civil liability (tax liability) is a consequence of the taxpayer's felonious acts charged in the criminal proceeding (that is evading the payment of, or refusing to pay, **a final and executory** deficiency tax assessment).

In all other instances, no civil liability arising from crime (in the form of deficiency taxes) may reasonably be deemed instituted.

The Informations in CTA Crim. Case Nos. O-503 and O-513 respectively charge the accused for violation of Section 254 of the NIRC of 1997, as amended, **for willful attempt to evade or defeat income tax for the year 2008 by under declaring his income**; and

[9] Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from discovery thereof and the institution of judicial proceedings for its investigation and punishment. (Section 281 of the NIRC of 1997, as amended)

for violation of Section 255 of the NIRC of 1997, as amended, **for failure to file his Income Tax Return and pay tax for taxable years 2010.** Notably, there is nothing in the Informations filed against accused that alleged that there were assessment notices issued against him that have become final and executory. In fact, evidence show that the Formal Letter of Demand assessing accused for, among others, deficiency income tax for the years 2008 and 2010, was issued only on August 10, 2016, or after the filing of the Information in Court.

In sum, the conviction of the accused in CTA Crim. Case No. O-513 does not have for its consequence the assessment and collection in such criminal case of the 2010 deficiency income tax; to do so, would deprive the accused of the remedy to contest the assessment, thus, rendering nugatory the procedure in assailing a tax deficiency assessment under Section 228 of the NIRC of 1997, as amended. **Indeed, institution of a criminal case is not a legal remedy to assess and collect the tax liability of a taxpayer.**

All told, I VOTE to: (i) DISMISS CTA Crim. Case Nos. O-501, O-502, O-504, O-508, O-511, O-512 and O-514 on jurisdictional grounds; and, (ii) ACQUIT accused Agerico L. Banzon in CTA Crim. Case Nos. O-503, O-505, O-506, O-507, O-509, O-510 and O-513 for failure of the prosecution to prove his guilt beyond reasonable doubt, without any civil liability.

ROMAN G. DEL ROSARIO
Presiding Justice