REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused.

CTA Crim. Case No. O-522
For: Violation of Section 254 of the NIRC of 1997, as amended (Tax Evasion)

x---------------------------------------x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused

CTA Crim. Case No. O-523
For: Violation of Section 255 of the NIRC of 1997, as amended (Failure to Supply Correct and Accurate Information)

x---------------------------------------x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,
Accused

CTA Crim. Case No. O-525
For: Violation of Section 254 of the NIRC of 1997, as amended (Tax Evasion)

x---------------------------------------x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CTA Crim. Case No. O-554
For: Violation of Section 255 of the NIRC of 1997, as amended (Failure to Supply Correct and Accurate Information)

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS,

Accused.

Promulgated:

MAY 3 0 2018

3:30 p.m.

x- -x

RESOLUTION

MANAHAN, *J.:*

On March 27, 2018, Accused Kingsam Express Incorporation (Kingsam for brevity) and Samuel S. Santos (Santos), through registered mail, filed a **Motion for Reconsideration (against the Decision Dated 12 March 2018)**[1] which was received by this Court on April 11, 2018. Plaintiff filed its **Comment and/or Opposition to the Motion for Reconsideration dated March 25 filed by the Accused**[2] on April 17, 2018 after being ordered and duly notified by this Court on April 17, 2018.[3]

Accused prays that the *Decision* dated March 12, 2018 be reversed and set aside and a new one be rendered instead acquitting it from criminal liability for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

Accused raised the following alleged errors in the assailed decision:[4]

1. The Honorable Court seriously erred in acquiring jurisdiction over the subject matter of the case despite clear allegations in the four (4) Informations that the amounts of deficiency income taxes being collected by private complainant Bureau of Internal Revenue (BIR) were merely estimate;

2. There being deprivation of due process committed upon the accused, the Honorable Court axiomatically ousted itself of jurisdiction. Hence, the Decision dated 12 March 2018 is void;

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[1] Docket, CTA Crim. Case No. O-522, Vol. IV, pp. 1631-1678.
[2] *Id.* at 1685-1688.
[3] *Id.*, Resolution dated April 17, 2018, p. 1684.
[4] Id., Motion for Reconsideration dated March 25, 2018, pp. 1640-1641.

3. The Honorable Court seriously erred in finding accused guilty beyond reasonable doubt despite the failure of the Prosecution to identify the accused as the offender/perpetrator of the offenses charged;

4. The Honorable Court seriously erred in finding badges of fraud based on presumption that accused falsified and used falsified three (3) deeds of sale in acquiring the buses;

5. The Honorable Court seriously erred in finding the existence of unlawful intent despite the absence of actual (and not merely presumption of) fraud;

6. The Honorable Court failed to consider accused' honest belief and reliance on their accountants and auditors, which negates the existence of fraud;

7. The Honorable Court seriously erred in applying the principle of constructive delivery and equated the same as actual transfer of ownership, hence, deliberately did not recognize the acquired buses in its financial statements; and

8. The Honorable Court seriously erred in finding that the three (3) Hyundai Aero Bus with Plate Nos. TXX963, TXX945, and TXX8013 acquired in 2009 have no evidence that the same were taken through loans or financing.

On the other hand, Respondent argues that this Court has jurisdiction over the cases filed against the accused and that due process was accorded the accused. Respondent also states that this Court did not err in finding the accused guilty of violations of Sections 254 and 255 of the 1997 National Internal Revenue Code (NIRC), as amended, for taxable years 2008 and 2009.

As to the first assigned error, accused argues that this Court has no jurisdiction on the instant case considering that the amounts indicated in the four Informations were not exact or mere estimates.

Section 7(b)(1) of Republic Act No. 9282 otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes" provides the jurisdiction of this Court on criminal tax cases, to wit:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> 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 and 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. (*Emphasis supplied*)

The records of this case reveal that accused Kingsam and accused Santos were charged under Sections 254 and 255 of the 1997 NIRC, as amended, for taxable years 2008 and 2009 which had injured or prejudiced the government in the estimated amount indicated under the respective Information or Amended Information. Such provisions provide the following:

> SEC. 254. *Attempt to Evade or Defeat Tax.* - **Any person who willfully attempts in any manner to evade or** an

> **defeat any tax imposed under this Code or the payment thereof** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes. (*Emphasis supplied*)
>
> xxx xxx
>
> 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 correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)

Also, Sections 52(A) and 253(d) of the 1997 NIRC, as amended, indicate the persons who should be responsible to file and pay the required internal revenue taxes, and the persons who shall be liable for the failure to file and pay said internal revenue taxes, respectively, to wit:

> SEC. 52. *Corporation Returns.* -
>
> (A) Requirements. - **Every corporation subject to the tax herein imposed**, except foreign corporations not engaged in trade or business in the Philippines, **shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return** in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer** and by the treasurer or assistant treasurer.
>
> xx xxx

SEC. 253. *General Provisions.* -

(a) xxx xxx

(b) xxx xxx

(c) xxx xxx

(d) In the case of associations, partnerships or corporations, **the penalty shall be imposed on the** partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

(e) xxx xxx
(*Emphasis supplied*)

Thus, the requisites for the offense under Section 254 in relation to Sections 52(A), 253(d), and 256[5] of the 1997 NIRC, as amended, are the following:

1. Offender is any person required to pay the tax imposed or make a return under NIRC;
2. Offender attempts in any manner to evade or defeat any tax imposed, or the payment thereof;
3. The attempt to evade or defeat any tax imposed, or the payment thereof is willful; and
4. In case the offender is a corporate taxpayer, the accused is its responsible officer.

On the other hand, the requisites for the offense under Section 255 in relation to Sections 52(A), 253(d), and 256 of the 1997 NIRC, as amended, are the following:

1. The offender is any person required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information;
2. The offender fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or

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[5] **SEC. 256. *Penal Liability of Corporations.*** - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;
3. Such failure is willful; and
4. In case the offender is a corporate taxpayer, the accused is its responsible officer.

Nowhere in the abovementioned requisites does it appear that the amount due for the tax liability should be exact in order for an offender to be adjudged guilty of the said criminal offenses.

What then is the importance of the exact amount of tax liability?

2nd paragraph of Section 205(b) of the 1997 NIRC, as amended provides that:

> **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) xxx xxx
>
> (b) By civil or criminal action.
>
> xxx xxx
>
> <u>The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case **as finally decided by the Commissioner**.</u>
>
> xxx xxx (*Emphasis and underscoring supplied*)

As shown above, the final assessment where the exact amount of the tax liability is supposed to have been reflected is required in the judgment of a criminal case invoking the imposition of the civil liability/ies therein. The exact amount of the final deficiency tax assessment is not required during the filing of the case because an assessment is not required in the filing of criminal cases, as provided in Section 222(a) of the NIRC, to wit:

> **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** -
>
> (a) <u>In the case of a false</u> or fraudulent <u>return with intent to evade tax</u> or of <u>failure to file a return</u>, 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 taken cognizance of in the civil or criminal action for the collection thereof. (*Underscoring ours*)

As shown by the abovementioned provision, the filing of the case before this Court does not require assessment. In order for this Court to acquire jurisdiction over the instant case, the Information need only to comply with the requisites under Section 6, Rule 110 of the Rules of Court, portions of which are quoted below:

> SEC. 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The trial of the case is the best evidence that this Court judicially determined the existence of a probable cause against the accused who had committed the criminal offense alleged by the Commissioner of Internal Revenue (CIR).

In *Adamson v. Court of Appeals*[6], the Supreme Court ruled that an assessment is not necessary in the filing of said case, *to wit*:

> The next issue is whether the filing of the criminal complaints against the private respondents by the DOJ is premature for lack of a formal assessment.
>
> Section 269 of the NIRC (now Section 222 of the Tax Reform Act of 1997) provides:
>
>> Sec. 269. Exceptions as to period of limitation of assessment and collection of taxes.-(a) In the case of a false or fraudulent return with intent to evade tax

[6] G.R. Nos. 120935 & 124557, May 21, 2009.

> or of failure to file a return, the tax may be assessed, or a proceeding in court after (sic) the collection of such tax may be begun without assessment, at any time within ten 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 taken cognizance of in the civil or criminal action for collection thereof... (*Underscoring supplied*)
>
> The law is clear. When fraudulent tax returns are involved as in the cases at bar, **a proceeding in court after** (sic) **the collection of such tax may be begun without assessment.** Here, the private respondents had already filed the capital gains tax return and the VAT returns, and paid the taxes they have declared due therefrom. Upon investigation of the examiners of the BIR, there was a preliminary finding of gross discrepancy in the computation of the capital gains taxes due from the sale of two lots of AAI shares, first to APAC and then to APAC Philippines, Limited. The examiners also found that the VAT had not been paid for VAT-liable sale of services for the third and fourth quarters of 1990. Arguably, the gross disparity in the taxes due and the amounts actually declared by the private respondents constitutes badges of fraud.

Further, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[7], the Supreme Court ruled that:

> 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 in court may be commenced without an 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.
>
> xxx xxx

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

> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. **It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code**. (*Emphasis supplied*)

As gleaned from the abovementioned decision, the rationale in not requiring a tax assessment for the filing of a criminal case is to penalize the taxpayer for its violation of the Tax Code and not to collect tax payment, which in the instant case, was the willful attempt of the accused to evade the payment of a particular tax, i.e. Criminal Case (CC) Nos. O-522 and O-525, and its failure to supply correct and accurate information in its income tax return (ITR), i.e. CC Nos. O-523 and O-554, respectively.

In the instant case, it will be absurd to require from Plaintiff the exact amount of the tax liability/ies of the accused in the Information considering that the accused Santos, even in his Counter-Affidavit,[8] merely made a general denial of the accusation against him and the accused Kingsam without any definite statement explaining the disparity in the declared amounts of purchase of buses found by the revenue examiners in the ITR of the accused Kingsam as compared to the amounts indicated in the alleged loans taken by the accused to finance its procurement of the said buses. The relevant material facts surrounding the loans allegedly taken by the accused came only into light during the trial of this case. There was no way for the complainant revenue examiners to determine the exact amount of accused's tax liability because accused did not submit those loan documents as part of his counter-affidavit.

[8] Docket, CTA Crim. Case No. O-522, Vol. 1, pp. 444-448.

Accused should be aware that as long as the crime is described in intelligible terms and with such particularity and reasonable certainty that the accused is duly informed of the offense charged, then the information is considered sufficient and valid. Such is the rationale ratiocinated by the Supreme Court in the case of *Edna J. Jaca v. People of the Philippines and the Sandiganbayan,*[9] to wit:

> Pursuant to the constitutional right of the accused to be informed of the nature and cause of the accusation against him, the Revised Rules of Court require, *inter alia*, that the information state the designation of the offense given by the statute and the acts or omissions imputed which constitute the offense charged. Additionally, it requires that these acts or omissions and their attendant circumstances "be stated in ordinary and concise language" and "in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to pronounce proper judgment." **As long as the crime is described in intelligible terms and with such particularity and reasonable certainty that the accused is duly informed of the offense charged, then the information is considered sufficient. In particular, whether an information validly charges an offense depends on whether the material facts alleged in the complaint or information shall establish the essential elements of the offense charged as defined in the law.** The *raison d'etre* of the requirement in the Rules is to enable the accused to suitably prepare his defense. (*Emphasis supplied*)

The required elements of the crime charged under Sections 254 and 255 of the 1997 NIRC are all present in the instant case. Thus, this Court has jurisdiction considering the estimated amount in the respective Information and Amended Information exceeded the threshold amount of one million pesos (Php1,000,000.00).

As to the second assigned error, accused argue that their right to due process was violated when the private complainant CIR immediately filed the instant criminal case on October 24, 2013 when the Letter of Authority (LOA) was only served on October 22, 2013.

Accused also argue that aside from the blatant disregard by the private complainant CIR, this Court also denied their right to due process by imputing and concluding that accused

[9] G.R. Nos. 166967, 166974, and 167167, dated January 28, 2013.

falsified and submitted false documents particularly the Deeds of Sale which were cited as among the badges of fraud constituting the basis in the determination of the unlawful or deliberate intent of the accused to evade the payment of taxes.

Accused should be aware that, as abovementioned, Section 222(a) of the 1997 NIRC, as amended, provides that in the case of a false or fraudulent return with intent to evade tax, the tax may be collected either through the usual tax assessment or by filing a criminal case in a court even without assessment. Hence, the filing of criminal case is different and independent from exercising government's administrative remedy of assessment. It may be filed simultaneously with the other.

The records of the instant case reveal that the private complainant CIR accorded accused Santos his right to due process when it received his counter-affidavit to explain his side of the affidavit of complaint by the revenue examiners. Such document formed part of the set of documents referred to the Department of Justice (DOJ) for the conduct of the preliminary investigation. The same document was also used and cited by the Assistant Prosecutor who handled said preliminary investigation and found the existence of probable cause to indict the accused of the said offenses as shown in the DOJ Resolution dated June 11, 2014.[10]

Accused should be aware that when private complainant CIR gave them the chance to explain their side to refute the allegations of its revenue examiners, that sufficiently complied with their constitutionally-guaranteed right to due process. In the case of *Saturnino C. Ocampo v. Hon. Ephrem S. Abando et al.*,[11] the Supreme Court ruled in such manner, to wit:

> **"The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense**." What is proscribed is lack of opportunity to be heard. Thus, one who has been afforded a chance to present one's own side of the story cannot claim denial of due process. (*Emphasis supplied*)

[10] Docket, CTA Crim. Case No. O-523, pp. 255-262.
[11] G.R. Nos. G.R. No. 176830, 185587, 185636, 190005, dated February 11, 2014.

Further, in the case of *People of the Philippines v. Acelo Verra*,[12] the Supreme *Court* ruled that, in criminal case, due process is served by the conduct of court trial, to wit:

> A day in court is the touchstone of the right to due process in criminal justice. It is an aspect of the duty of the government to follow a fair process of decision-making when it acts to deprive a person of his liberty.

The records of this case will show that the accused Santos was given his day in court not only by confronting his accusers but giving him the chance to present evidence to controvert the allegations against him and the accused Kingsam.

As to the Deeds of Sale, we reiterate our findings when such deeds were compared to the evidence presented by the accused themselves, to wit:

> Such deliberate misstatement of the contractual amount and non-disclosure of the actual transaction to LTO was known to accused Santos. He even admitted and even justified such act in his judicial affidavit, to wit:
>
> > Q19. Mr. Witness, it appears that the four (4) buses which you just mentioned and subject of a Contract to Sell, is also the same four (4) buses that were subject of a Deed of Sale executed on 16 June 2008 marked as Exhibit "P-7-2" for the Prosecution. Can you please explain to us why was there a Deed of Sale executed in 16 June 2008 when you negotiated to have the purchase price paid only in March 2011?
> >
> > A19. That Deed of Sale was executed in order that Kingsam can secure the loan that it needed for the purchase of the four (4) buses from a bank, ma'am. In the loan business, it is ordinary in financing agencies that the ownership of the property being subject of a loan be transferred first, before the financing agencies will release the loan being secured. That is the reason why we executed that Deed of Sale, ma'am.
>
> On the other hand, the Deed of Sale (DOS) for the 2009 acquisition shows that accused Santos was the vendor of said buses while accused Kingsam, represented by a certain Leandro S. Santos, was the vendee. Such fact is highly suspicious considering that accused Santos is the President of said company as shown in the PN, Contract to Sell, and other documents presented before the Court. Furthermore, the plate numbers in said DOS do not jibe with

[12] G.R. No. 134732 dated May 29, 2002.

the plate numbers in their Certificates of Registration based on the engine or motor number of said buses as stated in the said DOS. Thus, the latter is apparently falsified.

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The prosecution proved that the acquisitions in 2008 of the seven Kinglong buses were made through two (2) Deeds of Sale between accused Kingsam Express Incorporation (Kingsam for brevity), as represented by accused Samuel S. Santos as its President, and Philippine International Bus, Inc. (PIBI) with acquisition cost of Php5,850,000.00 for the first three (3) Kinglong buses and Php7,800,000.00 for the additional four (4) Kinglong buses.

The defense presented evidence showing that acquisition of these buses was made through financing or loans. The first 3 buses (KING LONG Model XMQ6119 with Plate Nos. TXR929, TXR919, and TXR939) were financed by a loan through a Promissory Note (PN) with Chattel Mortgage issued by the Philippine Business Bank under the following terms:

Purchase Price	P	16,800,000.00
Less: Down payment		5,040,000.00
Amount to be Financed	P	11,760,000.00
Interest		4,225,368.00
Other Charges		479,592.00
Amount Payable	P	16,464,960.00

As shown above, the total cost of said buses is not Php5,850,000.00 but Php16,800,000.00 or a unit cost of Php5,600,000.00...

xxx xxx xxx

As to the other 4 buses (KING LONG Model XMQ6119 with Plate Nos. TXX126, TXX923, TXX975, and TXX933), the defense presented a Contract to Sell dated March 8, 2008 between accused Kingsam, as represented by accused Samuel S. Santos as its President, and PIBI which reveals the following terms and conditions of said acquisition, to wit:

Contract Price/Unit	P 4,000,000.00
Total Amount	P 16,000,000.00
Terms:	
Downpayment upon signing of contract (which was on April 30, 2008)	P 400,000.00
Upon delivery of units	2,080,000.00
Balance payable thru bank financing	7,280,000.00
Balance from AMA Bank	6,240,000.00
Total Amount	P 16,000,000.00

As shown in the above excerpt of the assailed decision, the disparity in the purchase prices of Php5,850,000.00 and Php7,800,000.00 as stated in the two Deeds of Sale for the seven (7) Kinglong buses procured in 2008 were very apparent when compared to the purchase prices in the Promissory Note (PN) with Chattel Mortgage issued by the Philippine Business Bank and Contract to Sell dated March 8, 2008 between accused Kingsam, as represented by accused Santos as its President, and PIBI which indicate the purchase amount of Php16,800,000.00 and Php16,000,000.00, respectively.

In all said documents, the signatures of accused Santos were indicated therein which proved that he has knowledge and consented in the execution of said documents. Thus, said falsifications in the purchase prices were attributed to the accused which was considered among the badges of fraud stated in the assailed decision.

As to the third assigned error, accused argues that the lone witness of the prosecution did not identify accused Santos as the responsible corporate officer of accused Kingsam who perpetrated the crimes charged and did not mention who prepared and submitted the ITR and the Financial Statements (FS) for taxable years 2008 and 2009.

As shown in the Information and Amended Information, accused Santos was identified as the President and responsible officer of accused Kingsam. Further, Sections 52(A) and 253(d) of the 1997 NIRC, as amended, indicate the persons who should be responsible to file and pay the required internal revenue taxes, and the persons who shall be liable for the failure to file and pay said internal revenue taxes. It includes *inter alia* the President of such corporate entity.

Hence, even if the lone witness of the prosecution did not identify accused Santos as the responsible corporate officer, such fact was sufficiently alleged in the said Information and Amended Information. More so, the law itself identified who are the responsible corporate officers in case of the corporate entity's failure to file and pay said internal revenue taxes.

The evidence presented by the prosecution and even the evidence adduced by the accused had proven the allegation that accused Santos is indeed the President and responsible officer of accused Kingsam.

On the fourth and fifth assigned error, accused argues that the prosecution never alleged in their complaint-affidavit that the three deeds of sale it secured from the LTO were falsified and it never presented any supporting document to prove the alleged falsity of the three deeds of sale.

It is true that there was no allegation from the prosecution as to the falsity or falsification in the three deeds of sale. As discussed above, in their counter-affidavit, accused merely denied the accusation of the complainant revenue examiners that the disparity in the declaration of income earned in the ITR of the accused when compared to the procurement of buses made in taxable years 2008 and 2009 were corporation's undeclared income.

It is only after the case was filed in this Court that the accused argued that the procurement of buses was not funded by their corporate income but from the loans taken by them in the years 2008 and 2009, and adduced and presented said loan documents during the trial of this case. Such facts and documents were not raised or adduced by accused Santos in his counter-affidavit nor during the preliminary investigation at DOJ.

It is during the appreciation of said evidence that the details contained in the deeds of sale were remarkably different from the figures embodied in the loan documents and other evidence presented by the accused for their defense.

Further, what is required only in the information is that as long as the crime is described in intelligible terms and with such particularity and reasonable certainty that the accused is duly informed of the offense charged, then the information is considered sufficient and valid as cited in the *Jaca* case. The attempt of the accused not to pay the rightful tax and its failure to supply the correct information in the tax return were properly described in the said Information and Amended Information.

The accused is mistaken to think that this Court merely made presumptions as to those facts. The findings of this Court were based entirely on the evidence presented by both parties taken as a whole to determine what really transpired during such transactions.

It must be recalled in the assailed decision that the execution of falsified deeds of sale is not only the badge of fraud cited therein which became the basis to determine the unlawful intent to hide the payment of the rightful income tax for the said taxable years. This Court also found that there was a deliberate non-recognition of the acquired buses in the FS as assets, and the loans incurred from Philippine Business Bank, AMA Rural Bank of Mandaluyong, Inc., RCBC Leasing & Finance Corporation, and Insular Bank, as liabilities.

When these facts are taken all together based on the evidence presented during trial, there was really an attempt by the accused to hide the actual transactions from government authorities such as the BIR. Thus, it indicates unlawful intent.

As to the sixth assigned error, accused faulted this Court in not considering the honest belief and reliance on the expertise of accountant and auditors they hired. Accused argues that such should have negated the existence of fraud.

Accused should be aware that even if he relies on his hired accountants or auditors to prepare its financial statements (FS), the responsibility on what information will be reflected in said FS still rests on his sound judgement.

According to the Philippine Financial Reporting Standards (PFRS),[13] the management of an entity, which is accused Santos' main function as President of Kingsam, has the primary responsibility for the preparation and presentation of the said FS. The function of said auditors is merely to render an opinion as to the fair presentation of said FS.

Thus, accused Santos cannot place his mistake to the said accountants and auditors considering that he has the knowledge of the acquisition and usage of said buses.

As to the seventh assigned error, accused faulted this Court for applying Article 1498 of the Civil Code of the Philippines as regards the concept of *constructive delivery* based on notarized sales transactions considering that the buses were never in their possession in 2008 and 2009 and they relied on the expertise of their accountants and auditor

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[13] Philippine Financial Reporting Standards (PFRS) including Philippine Accounting Standards (PASs) and Philippine Interpretations as at December 31, 2006, Part I of II, Framework for the preparation and presentation of Financial Statements, pp. 10-11.

that such recognition is not necessary at that time, hence, there was no deliberate intention to hide the transaction from the government.

Again, we reiterate our findings, to wit:

> If the assertion and justification by accused Santos and Kingsam's accountant will be followed, the recognition of said assets and liabilities in accused Kingsam's FS should have been reflected in the FS for the ending period of 2010 or 2011 when Kingsam's certificate of public convenience was issued or payments were being made, respectively. But none of that reporting was made. As shown in the following balances for PPE Accounts and Liability Accounts in the FS of accused Kingsam for calendar years 2008 to 2012, such transactions were not reflected at all, to wit:

Ending period	PPE Account	Liability Account
2008	2,110,800.00	2,328,028.35
2009	1,872,000.00	2,194,391.00
2010	4,509,870.00	4,855,573.00
2011	3,947,740.00	3,909,061.00
2012	3,391,012.22	3,063,376.06

> Based on the loan documents, the acquisition of 7 buses in 2008 alone had a cost of Php32,800,000.00, which is far higher than the balances as shown in the above table. Also contrasted with the acquisition cost thereof in the Deeds of Absolute Sale, there is a marked difference of Php19,150,000.00.

> The accused had really no intention to disclose the actual transaction in its FS because if accused Santos and his accountant were truthful in their testimony, the balances in the year 2010 to 2012 should have already contained the additional buses in the PPE account of accused Kingsam and the corresponding loan amounts in the liability account.

The evidence will prove that said buses were never reflected even after the transaction period especially when they alleged that the payment started only in 2010 and 2011 and yet at the ending period of 2012, said buses were still not reflected in the said FS.

As to the application of constructive delivery citing Section 1477 in relation to Section 1498 of the Civil Code, the delivery is considered at the time of the execution of such contract unless there was a contrary stipulation. On the other hand, the PN and the Contract to Sell in their terms and conditions had no provision that the ownership shall only be transferred after payment. Thus, in the absence of such stipulation, the law recognizes that the date of delivery is the date of the execution of such contract.

As to the last assigned error, accused argues that this Court erred in finding the three (3) Hyundai Aero buses with plate nos. TXX963, TXX945, and TXX813 acquired in 2009 as having no evidence of their acquisition through loans or financing considering that the loan or financing for Hyundai Aero buses with plate nos. TXX963 and TXX945 were proven by Exhibit "A-43-A" while for Hyundai Aero bus with plate no. TXX813, by Exhibits "A-25" and "A-25-A" respectively.

Also, accused Santos attempted to present a piece of evidence which he identified as Exhibit "A-55" and which he alleged is a certified true copy of the Promissory Note with Chattel Mortgage from Insular Bank.

The records of this case reveal that there is no Exhibit "A-43-A," although it was listed in the Formal Offer of Evidence (FOE).[14] The document next to Exhibit "A-43"[15] is a Promissory Note with Chattel Mortgage marked as Exhibit "A-34-A"[16] which was not admitted by this Court under Resolution dated September 20, 2017 due to accused's failure to present the originals for comparison.[17]

On the other hand, Exhibits "A-25" and "A-25-A"[18] pertain to the Certificate of Registration (COR) from Land Transportation Office (LTO) and a notation as to the name of a bank where it was encumbered, respectively.

In the case of *PNOC Shipping and Transport Corporation v. Honorable Court of Appeals et al.*,[19] the Supreme Court

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[14] Docket, CTA Crim. Case No. O-522, Vol. III, pp. 1339-1377.
[15] *Id.* at 1432.
[16] *Id.* at 1433-1434.
[17] *Id.* at 1472-1473.
[18] Docket, Vol. III, p. 1396.
[19] G.R. No. 107518 dated October 08, 1998.

defined what probative value is as distinguished from admissibility of evidence, to wit:

> ...This is a distinction we wish to point out. Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to (sic) considered at all. On the other hand, the **probative value of evidence refers to the question of whether or not it proves an issue**... (*Emphasis supplied*)

Accused should be aware that the issue brought about is its allegation that such bus was acquired through loans or financing. The fact proven by Exhibit "A-25-A" is that the said bus was encumbered to Insular Rural Bank, Inc. or the latter has legal claim on it. However, there is no indication in the alleged document as to what kind of transaction the bank entered with the accused for such bus to be encumbered. Thus, this Court cannot presume that the encumbrance was brought about by a loan or financing taken by the accused.

As to the introduction of a document cited as Exhibit "A-55," the records of the case reveal that there was no Exhibit "A-55" listed in the FOE[20] or a document marked as such.

Accused should be aware that a document being presented as evidence cannot be considered by this Court if not formally offered as provided under Section 34, Rule 132 of the Rules of Court.

In the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,[21] the Supreme Court explained the necessity of an evidence being formally offered citing its ruling in the case of *Heirs of Pedro Pasag v. Parocha*,[22] to wit:

> A **formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be**

[20] *Supra.*, Note 14.
[21] G.R. No. 195876 dated December 05, 2016.
[22] G.R. No. 155483 dated April 27, 2007.

> **<u>required to review documents' not previously scrutinized by the trial court.</u>**
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."**

Hence, this Court cannot allow the introduction of such document.

Having established that no new grounds have been raised, this Court *a quo* finds no compelling reason to deviate from its original ruling.

WHEREFORE, premises considered, the Motion for Reconsideration (against the Decision Dated 12 March 2018) is hereby **DENIED** for lack of merit. Accordingly, the **assailed *Decision*** dated March 12, 2018 is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my ~~dissenting~~ opinion)
CAESAR A. CASANOVA
Associate Justice