



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 7, 2022 which reads as follows:

“G.R. No. 254086 (*Kingsam Express Incorporation and Samuel Santos v. People of the Philippines*). – This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² and Resolution³ dated October 24, 2019 and October 16, 2020, respectively, of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Crim. No. 054.

THE ANTECEDENTS

Petitioner Kingsam Express Incorporation (KEI) is a corporation duly organized and existing under Philippine law. During the relevant period, petitioner Samuel S. Santos (Santos) was the President of KEI. Both KEI and Santos were charged with violation of Sections 254⁴ (*Attempt to Evade or Defeat Tax*) and 255⁵ (*Failure to File Correct Income Tax Return*) of the

¹ *Rollo*, pp. 14-72.

² *Id.* at 79-117. Penned by Associate Justice Erlinda P. Uy, and concurred in by Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro; Presiding Justice Roman G. Del Rosario dissented.

³ *Id.* at 203-211. Penned by Associate Justice Erlinda P. Uy, and concurred in by Associate Justices Juanito C. Castañeda, Jr., Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro; Presiding Justice Roman G. Del Rosario dissented.

⁴ SEC. 254. *Attempt to Evade or Defeat Tax.*- Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand 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.

⁵ SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

National Internal Revenue Code of 1997, as amended (NIRC), for the taxable years 2008 and 2009.⁶

Except for the date, taxable year, and principal amount of taxes alleged, the accusatory portion of the Information for violation of Section 254 of the NIRC reads:

That on or about 15th day of April 2009, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously attempt to evade or defeat the payment of its correct tax, as said accused substantially under **declare** the corporation's income for taxable year 2008, in order to conceal its true and correct taxable income, thus, resulting to a deficiency income tax in the amount of Four Million Ninety Five Thousand Pesos (Php 4,095,000.00) exclusive of surcharge and interest, as of the time of the filing of the complaint, to the damage and prejudice of the government.

CONTRARY TO LAW.⁷

Similarly, save for the date, taxable year, acquisition cost of the bus units, and principal amount of taxes alleged, the accusatory portion of the Information for violation of Section 255 of the NIRC reads:

That on or about 15th day of April 2009, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, accused Kingsam Express Incorporation and Samuel S. Santos, being the President and responsible officer of the said corporation, with Taxpayer Identification No. 239-173-420, did then and there willfully, unlawfully, and feloniously fail to supply correct and accurate information in its income tax return for taxable year 2009 by making it appear that the corporation's income/revenue for taxable year 2009 was in the amount of Php 1,623,734.60 only, when, in truth and in fact, Kingsam Express, Inc. had other income during same taxable year but failed to declare them in the ITR as shown by its acquisition of bus units in the total amount of Php36,000,000.00, and failing to declare or report the same during said taxable year, thus concealing the corporation's true and correct income for taxable year 2009, to the damage and prejudice of the government in the amount of Ten Million Eight Hundred Thousand Pesos (Php10,800,000.00) exclusive of surcharge and interest, representing accused's income tax deficiency as of the time of the filing of the complaint.

CONTRARY TO LAW.⁸

The cases were docketed as follows:

⁶ Id. at 81.

⁷ Id. at 82.

⁸ Id. at 82-83.

Docket Number	Charge	Deficiency Income Tax Alleged in the Information	Taxable Year
CTA Crim. Case No. O-522	Violation of NIRC, Section 254	₱4,095,000.00	2008
CTA Crim. Case No. O-523	Violation of NIRC, Section 255	₱10,800,000.00	2009
CTA Crim. Case No. O-525	Violation of NIRC, Section 254	₱10,800,000.00	2009
CTA Crim. Case No. O-554	Violation of NIRC, Section 255	₱4,095,000.00	2008

Upon arraignment, Santos pleaded “not guilty.” Trial thereafter ensued.⁹

The prosecution anchored its case on KEI’s acquisition of 24 buses, seven of which were purchased in 2008 and 18 were purchased in 2009. Using the cash expenditure method, the prosecution theorized that the total purchase price for the buses overwhelmingly exceeded KEI’s reported income of ₱1,212,772.89 in 2008 and ₱1,623,734.60 in 2009. This gave rise to the inference that KEI and Santos, as its president and responsible officer, are guilty of tax evasion and failure to file the correct income tax return (ITR).¹⁰

KEI and Santos countered that the acquisition of the buses were financed by loans. In support thereof, they presented deeds of sale, promissory notes with chattel mortgage, contracts to sell, check payments, and loan agreements.¹¹

In a Decision¹² dated March 12, 2018, the CTA Second Division found KEI and Santos guilty of all charges. For each indictment, the CTA Second Division sentenced Santos to an indeterminate penalty of imprisonment for two years, as minimum, to four years, as maximum, and to pay a fine of ₱100,000.00. Likewise, KEI was ordered to pay a fine of ₱100,000.00 for each indictment.

Using the cash expenditure method, the CTA Second Division found that KEI substantially underdeclared its income. For the taxable year 2008, KEI declared only an income of ₱1,212,772.89, in stark contrast to the

⁹ Id. at 84.

¹⁰ Id. at 108-110; 136-137; and 140.

¹¹ Id. at 138-141.

¹² Id. at 128-163. Penned by Associate Justice Catherine T. Manahan, and concurred in by Associate Justice Juanito C. Castañeda, Jr.; Associate Justice Caesar A. Casanova dissented.

downpayments amounting to ₱7,520,000.00 for the bus units. For the taxable year 2009, only the amount of ₱13,440,000.00 out of the ₱24,000,000.00 total acquisition cost was covered by loans or financing. This represents a balance of ₱10,560,000.00 that was not funded by loans, which presumably was sourced from KEI's income. However, in its 2009 ITR, KEI declared an income of only ₱1,623,734.00.¹³

In addition, the CTA Second Division found several badges of fraud that reveal an intent to hide the transactions from the authorities. First, copies of three deeds of sale submitted to the Land Transportation Office (LTO) were falsified. The purchase price and plate numbers indicated in the deeds of sale did not match those in the promissory notes, loan instruments, and certificates of registration of the buses. Second, the transactions were not reflected in KEI's financial statements from 2008 to 2012, revealing an intention to hide the acquisition from authorities.¹⁴

According to the CTA Second Division, the totality of circumstances indeed prove that petitioners are guilty of tax evasion and failure to file the correct return. Despite the finding of guilt, however, the CTA Second Division did not impose any civil liability on petitioners considering that the Commissioner of Internal Revenue (CIR) has not yet issued a final assessment of KEI's tax delinquencies.¹⁵

The dispositive portion of the Decision of the CTA Second Division reads:

WHEREFORE, premises considered, the Court rules as follows:

1. In CTA Crim. Case No. O-522, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2008 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years, as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

2. In CTA Crim. Case No. O-523, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2009 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years, as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

¹³ Id. at 157-159.

¹⁴ Id. at 141-143.

¹⁵ Id. at 143-161.

3. In CTA Crim. Case No. O-525, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2009 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years, as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

4. In CTA Crim. Case No. O-554, accused **SAMUEL S. SANTOS** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2008 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum, to four (4) years, as maximum, and **ORDERED** to pay a fine in the amount of Php100,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

In addition, **KINGSAM EXPRESS INCORPORATION** is further **ORDERED TO PAY** the following fines pursuant to Section 256 of the NIRC of 1997, as amended:

1. In CTA Crim. Case No. O-522, a fine of **ONE HUNDRED THOUSAND PESOS** (Php100,000.00) for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2008;
2. In CTA Crim. Case No. O-523, a fine of **ONE HUNDRED THOUSAND PESOS** (Php100,000.00) for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2009;
3. In CTA Crim. Case No. O-525, a fine of **ONE HUNDRED THOUSAND PESOS** (Php100,000.00) for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 of the NIRC of 1997, as amended, for taxable year 2009; and
4. In CTA Crim. Case No. O-554, a fine of **ONE HUNDRED THOUSAND PESOS** (Php100,000.00) for being found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2008.

SO ORDERED.¹⁶

Associate Justice Caesar A. Casanova dissented on five grounds. *First*, the indictments were defective as no definite amount of tax delinquencies was alleged. *Second*, petitioners' due process rights were

¹⁶ Id. at 161-163.

violated. The taxpayers' proper income should first be determined before cases may be filed against them. *Third*, Santos was not identified in open court by the prosecution's lone witness, the tax examiner who investigated the case. *Fourth*, the tax examiner made inconsistent statements which diminished his credibility. *Lastly*, the defense convincingly proved the source of financing for the acquisition of the buses. Accordingly, Justice Casanova voted to acquit petitioners of all charges.¹⁷

Petitioners filed their motion for reconsideration¹⁸ but the CTA Second Division denied the same in a Resolution¹⁹ dated May 30, 2018.

Undaunted, petitioners filed a petition for review with the CTA *En Banc*, essentially arguing that: (1) the CTA has no jurisdiction over the case since the tax deficiencies alleged in the informations were mere estimates; (2) Santos was not identified in court by the lone prosecution witness; (3) the taxes allegedly evaded was not yet due; and (4) the charges were not proven beyond reasonable doubt.²⁰

In a Decision²¹ dated October 24, 2019, the CTA *En Banc* affirmed the CTA Second Division. The CTA *En Banc* ruled that the CTA Second Division had jurisdiction over the cases based on the allegations in the informations. It likewise held that petitioners were not denied due process since final assessment is not required before the institution of criminal cases under the NIRC. At any rate, the due process requirements had been complied with during the preliminary investigation stage before the Department of Justice (DOJ).²²

In addition, the CTA *En Banc* found that Santos judicially admitted his identity during the pre-trial of the case, dispensing the need for the prosecution witness to identify him during the trial. Lastly, the CTA *En Banc* affirmed the use of the cash expenditure method as an indirect way to impute unreported income on petitioners. With this, the CTA *En Banc* found the evidence sufficient to convict petitioners of the charges.²³

The dispositive portion of the Decision of the CTA *En Banc* reads:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated March 12, 2018 and Resolution dated May 30, 2018 are hereby **AFFIRMED**.

SO ORDERED.²⁴

¹⁷ Id. at 164-179

¹⁸ Id. at 271-318.

¹⁹ Id. at 181-201.

²⁰ Id. at 87-89.

²¹ Id. at 79-117.

²² Id. at 89-99.

²³ Id. at 100-115.

²⁴ Id. at 116.

Presiding Justice Roman G. Del Rosario dissented and voted to acquit petitioners of all charges. He argued that mere increase in expenses is not tantamount to income. He also found the BIR's failure to determine the likely source of income fatal to the prosecution's case. Lastly, he asserted that KEI should not be held liable since it was not previously arraigned.²⁵

Petitioners filed a motion for reconsideration²⁶ raising, among others, the issue of KEI's non-arraignment.²⁷ Additionally, they presented a photocopy of an internal memorandum dated October 24, 2016 prepared and signed by the prosecution's lone witness. The memorandum purportedly cleared petitioners of all charges after a re-examination of their financial statements. According to petitioners, this constituted newly discovered evidence which the CTA *En Banc* must recognize.²⁸

However, the CTA *En Banc* denied their motion for reconsideration in the assailed Resolution²⁹ dated October 16, 2020. It held, among others, that no law, rule or jurisprudence requires corporations to be arraigned.³⁰ Moreover, it ruled that the internal memorandum constituted "forgotten evidence" or evidence already in existence or available before or during the trial. In addition, being a mere photocopy, the internal memorandum lacked any probative value.³¹ As to the other grounds raised by petitioners, the CTA *En Banc* ruled that they had been sufficiently addressed in the Decision.

In their petition before this Court, KEI and Santos impute six errors on the CTA *En Banc*. *First*, they assail KEI's conviction *sans* an arraignment. *Second*, petitioners dispute the CTA's subject-matter jurisdiction over the charges since the amount indicated in the informations were mere estimates. *Third*, they insist that Santos was never identified as the perpetrator of the offenses charged. *Fourth*, petitioners maintain that they were denied due process since no final assessment was issued before they were indicted. *Fifth*, they contend that the use of the expenditure method is insufficient to prove guilt beyond reasonable doubt. *Lastly*, petitioners ask the Court to admit the internal memorandum in evidence and on the basis thereof, acquit them of all charges.

In a Resolution³² dated July 7, 2021, We required the Office of the Solicitor General (OSG) to comment on the petition.

In a Manifestation and Motion³³ dated September 13, 2021, the OSG repleaded the explanations made by the CTA *En Banc* in its assailed ruling,

²⁵ Id. at 118-126.

²⁶ Id. at 212-243.

²⁷ Id. at 213-219.

²⁸ Id. at 238-239.

²⁹ Id. at 203-211.

³⁰ Id. at 206.

³¹ Id. at 209-210.

³² Id. at 700.

³³ Id. at 716-719.

arguing that the factual issues and arguments raised by petitioners were mere reiterations of issues and arguments already judiciously passed upon by the CTA Second Division and the CTA *En Banc*.

OUR RULING

We deny the petition.

The CTA Second Division, as affirmed by the CTA *En Banc*, correctly convicted KEI and Santos for violation of Sections 254 and 255 of the NIRC.

I

To successfully prosecute a violation of Section 254 of the NIRC, the CTA *En Banc* correctly stated the following elements that must be established by the prosecution: (1) a tax is imposed under the NIRC and a person, natural or juridical, is liable for such 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 the tax or payment thereof is willful.

All the elements are present in this case.

First, KEI is a duly registered corporation and is required under Section 52(A)³⁴ of the NIRC to file quarterly income tax returns and a final or adjustment return. The same legal provision identifies the president as one of the responsible officers who, in this case, is Santos.

Second, using the cash expenditure method, KEI's ITRs for the taxable years 2008 and 2009 also substantially underdeclared the corporation's income by at least 620% and 650%, respectively.

Third, petitioners' acts were willful. Santos, as the president and responsible officer, knew of KEI's purchase of the bus units in 2008 and 2009. And yet, he deliberately omitted the transactions in the corporation's ITRs and financial statements. Indeed, there was a deliberate ploy on petitioners' part to conceal the transactions surrounding the acquisition of the buses in 2008 and 2009. As correctly found by the CTA, petitioners misstated the purchase price in the deeds of sale submitted to the LTO.

³⁴ 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 income tax return shall consist of a maximum of four (4) pages in paper form or electronic form [Introduced by Sec. 15 of the Tax Reform for Acceleration and Inclusion (TRAIN)], be filed by the president, vice-president or other principal officer, shall be sworn to by such officer and by the treasurer or assistant treasurer, x x x.

KEI's financial statements from 2008 to 2012 did not reflect the acquisition of buses or the loan agreements used to finance such acquisition. These acts, taken together, reveal an attempt to evade or defeat the tax or the payment thereof.

Accordingly, We agree with the CTA *En Banc* that petitioners are guilty of violating Section 254 of the NIRC. We likewise affirm the penalty imposed by the CTA *En Banc*.

As to the charge of violating Section 255 of the NIRC, its elements are: (1) the taxpayer is required to pay any tax, make a return, keep any 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; (2) the taxpayer failed to do so; and (3) such failure is willful.

All the elements are likewise present here.

First, KEI is required under Section 52(A) of the NIRC to file an accurate quarterly income tax return and final or adjustment return, and Santos, as the president, is responsible therefor.

Second, as discussed in the preceding section, petitioners made substantial underdeclarations in their 2008 and 2009 ITRs. Thus, they failed to supply correct and accurate information on KEI's return for the taxable years 2008 and 2009.

Third, as explained earlier, petitioners' failure to declare their unreported income was willful and deliberate.

Hence, We likewise affirm petitioners' conviction for violation of Section 255 of the NIRC. With regard to the penalty, the same is consistent with that imposed under Sections 255 and 256 of the NIRC. We thus affirm the same.

II

As to the other issues raised by petitioners, We discuss them in *seriatim*.

II. A.

Arrestment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him.³⁵ "The purpose of arrestment is to apprise the accused of the possible loss of freedom, even of his life, depending on the

³⁵ CONSTITUTION, Article III, Section 14(2).

nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.”³⁶

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers responsible for the offense shall be charged and penalized for the crime.³⁷ This is so since a corporation is a juridical entity created by law. It can act only through its board of directors or officers, in conformity with its articles of incorporation and by-laws. Consequently, corporate officers or employees through whose act, default or omission the corporation commits a crime are themselves individually guilty of the crime.³⁸

However, a corporation, as a legal entity, cannot be arrested or imprisoned³⁹ for it possesses no corporeal body. In the same manner, a corporation cannot be “arraigned” in the classical sense. As an artificial being existing by legal fiat, it does not have the faculty of cognition that triggers the constitutional right to be informed of the nature and cause of the charges against it; hence, the need to prosecute the responsible officers for the corporate criminal act.

With this in mind, We rule that KEI need not be arraigned separately since Santos, its president and responsible officer, was already arraigned. The arraignment of Santos is sufficient to put the corporation on notice that it is being prosecuted for a violation of the law.

II. B.

It is settled in jurisprudence that subject-matter jurisdiction in criminal cases is conferred by the Constitution or by law and determined by the allegations in the complaint or information.⁴⁰

Under Section 7(b)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, the CTA exercises exclusive original jurisdiction over cases involving criminal offenses arising from violations of the NIRC where the principal amount of taxes and fees claimed is at least one million pesos (₱1,000,000.00), exclusive of charges and penalties.

Similarly, Rule 4, Section 3(b)(1) of the 2005 Revised Rules of the CTA, as amended, provides that the CTA in Division shall exercise exclusive original jurisdiction over all criminal offenses arising from violation of the NIRC where the principal amount of taxes and fees claimed is one million pesos or more, exclusive of charges and penalties.

³⁶ *People v. Pangilinan*, 547 Phil. 260, 274 (2007).

³⁷ *Joint Ship Manning Group, Inc. v. Social Security System*, G.R. No. 247471, July 7, 2020.

³⁸ *Home Development Mutual Fund Pag-Ibig Fund v. Sagun*, 837 Phil. 608 (2018).

³⁹ *Ching v. Secretary of Justice*, 517 Phil. 151, 177 (2006).

⁴⁰ *Guinhawa v. People*, 505 Phil. 383, 401 (2005).

Here, a plain reading of the informations shows that the prosecution alleged with sufficient clarity that the principal amount of taxes claimed is at least one million pesos and that the same is exclusive of charges and other fees. In particular, the informations alleged the following tax deficiencies, exclusive of surcharges and fees:

Docket Number	Charge	Deficiency Income Tax Alleged in the Information	Taxable Year
CTA Crim. Case No. O-522	Violation of NIRC, Section 254	₱4,095,000.00	2008
CTA Crim. Case No. O-523	Violation of NIRC, Section 255	₱10,800,000.00	2009
CTA Crim. Case No. O-525	Violation of NIRC, Section 254	₱10,800,000.00	2009
CTA Crim. Case No. O-554	Violation of NIRC, Section 255	₱4,095,000.00	2008

Clearly, the amounts alleged are all at least one million pesos. Hence, the CTA Second Division did not err in exercising jurisdiction over the cases.

II. C.

We find no merit in petitioners' contention that Santos was not adequately identified by the prosecution. The CTA *En Banc* pointed to the pre-trial order where Santos himself stipulated on the fact that he is the same person charged in the informations. This constitutes a judicial admission that is binding on petitioners. We thus agree with the CTA *En Banc* that the identity of Santos as the president and responsible officer of KEI was sufficiently established during the trial.

II. D.

The State can resort to administrative and judicial remedies to collect taxes from erring taxpayers.⁴¹ The judicial remedies comprise both civil and criminal suits. Unlike summary administrative remedies, however, the resort to criminal suit is not conditioned upon a final valid assessment. Thus, the State, through the CIR, can directly file a criminal complaint to enforce the collection of taxes.

⁴¹ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 835 Phil. 875, 903 (2018).



In *Ungab v. Cusi*,⁴² We held that an assessment of deficiency is not a condition *sine qua non* for the filing of a criminal action for willful and deliberate attempt to defeat or evade the payment of taxes. Similarly, in *Adamson v. Court of Appeals*,⁴³ We ruled that the prosecution of criminal offenses under the NIRC need not go through the assessment phase.

That the State resorted immediately to criminal prosecution is thus not a violation of petitioners' due process rights. Indeed, they were given the opportunity to be heard during the preliminary investigation stage before the DOJ. There, they were able to file their affidavits and present evidence to rebut the existence of probable cause. Further, they were likewise accorded due process during the trial of this case, where they had the opportunity to present evidence of innocence. Their claim of denial of due process is thus untenable.

II. E.

Section 6(B)⁴⁴ of the NIRC empowers the CIR to assess a taxpayer based on the best evidence obtainable when there is reason to believe that there is fraud. Pursuant thereto, the CIR issued Revenue Audit Memorandum Order (RAMO) No. 1-2000, which authorizes the use of indirect approaches to investigation.

A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income.⁴⁵ The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.⁴⁶ Of course, the taxpayer may show that this excess resulted from non-taxable items, such as loans, gifts, inheritance or assets on hand at the beginning of the period.

The use of the expenditure method is not at all novel. In *Collector of Internal Revenue v. Jamir*,⁴⁷ We approved the resort to the expenditure method by the CTA. We thus affirm the use of the cash expenditure method in proving petitioners' guilt.

⁴² 186 Phil. 604, 610 (1980).

⁴³ 606 Phil. 10, 27 (2009).

⁴⁴ Section 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* x x x (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.

⁴⁵ *Bureau of Internal Revenue v. Court of Appeals*, 747 Phil. 772, 787 (2014).

⁴⁶ *Id.*

⁴⁷ 114 Phil. 650 (1962).

II. F.

Petitioners invite our attention to a photocopy of an internal memorandum dated October 24, 2016, which they insist is exculpatory evidence. The CTA *En Banc*, however, refused to admit the document in evidence, holding that the internal memorandum constituted “forgotten evidence” or evidence already in existence or available before or during the trial. It also ruled that it has no probative value, being a mere photocopy.

We agree with the CTA *En Banc*.

“Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.”⁴⁸ Presentation of forgotten evidence is disallowed because it results in a piecemeal presentation of evidence, a procedure that is not in accord with the orderly administration of justice and serves only to delay the proceedings.⁴⁹

As correctly ruled by the CTA *En Banc*, the internal memorandum has been in existence since October 24, 2016. Petitioners could have presented a copy thereof before their formal offer on August 22, 2017. In addition, being a mere photocopy, the admission of the same runs contrary to the best evidence rule.⁵⁰ At any rate, even if it is admitted, it cannot rebut the overwhelming evidence of guilt presented by the prosecution.

IN VIEW OF ALL THE FOREGOING, the petition is **DENIED**. The Decision dated October 24, 2019 and the Resolution dated October 16, 2020 of the Court of Tax Appeals *En Banc* in CTA EB Crim. No. 054 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴⁸ *Office of the Ombudsman v. Coronel*, 526 Phil. 351, 363 (2006).

⁴⁹ *Id.*

⁵⁰ See *Spouses Tapayan v. Martinez*, 804 Phil. 523, 534 (2017), citing *Lorenzana v. Lelina*, 793 Phil. 271, 282 (2016).

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