

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

CTA CRIM. CASE NO. O-408

For: Violation of Section 254 in relation to Sections 253 and 256 of the National Internal Revenue Code, as amended (Attempt to Evade or Defeat Tax)

-versus-

Members:

Castañeda, Jr., *Chairperson*,
Mindaro-Grulla, and,
Bacorro-Villena, *JJ*.

ENVIROAIRE, INC.,
represented by TYRONE N.
ONG & ARLENE CHUA,
Accused.

Promulgated:

SEP 04 2019

[Signature]

X-----X

DECISION

CASTAÑEDA, JR., J.:

STATEMENT OF THE CASE

This is a criminal case filed against the accused for Violation of Section 254 in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997 (NIRC), as amended (Attempt to Evade or Defeat Tax) under the Court's criminal jurisdiction in Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282 and 9503¹ *je*

¹SEC. 7. *Jurisdiction.* - The CTA shall exercise:

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and under Rule 4 Section 3(b)(1) of the Revised Rules of the Court of Tax Appeals.²

STATEMENT OF THE FACTS

The Parties

Plaintiff, People of the Philippines, is represented by the Legal Division of the Bureau of Internal Revenue, Revenue Region No. 7 under the Commissioner of Internal Revenue.³

Accused Enviroaire, Inc. (Enviroaire) is a domestic corporation registered with the Securities and Exchange Commission (SEC) on March 13, 2002⁴ and Bureau of Internal Revenue (BIR) Revenue District No. (RDO) 041 – Mandaluyong with TIN No. 218-084-255-000.⁵ It is primarily engaged in the business of emission testing and supply of equipment and other related products, including parts and accessories.⁶ *ju*

(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.”

² “SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

xxx

xxx

xxx

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) 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 of the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and”

³ “SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.”

⁴ Q&A16 to Q&A18, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, *Docket*, Vol. II, pp. 872-873; Exhibit “P-4”, *Docket*, Vol. I, p. 552.

⁵ BIR Registration Information, Exhibit “P-7”, *Docket*, Vol. I, p. 572; BIR Certification, Exhibit “P-9”, *Docket*, Vol. I, p. 585.

Accused Tyrone N. Ong (also known as Tyrone N. Arejola)⁷ and Arlene Chua are the corporate officers of Enviroaire, as President and Treasurer, respectively.⁸

The Relevant Facts

On April 26, 2012, pursuant to an audit investigation on the purchase of spare parts and repair and maintenance of light armored vehicles (LAVs) by the Philippine National Police (PNP) under COA Office Order No. 2011-866 dated December 29, 2011, the Commission on Audit (COA), through COA Director Leonor D. Boado, issued *Subpoena Duces Tecum*, which ordered the RDO 41 of Mandaluyong to issue a Certification as to whether the following amounts were included in the total gross sales of Enviroaire in its tax returns for calendar year (CY) 2007 and 2008.⁹

Official Receipt Nos.	Amount	Date	Invoice Nos.
7760	₱ 85,179,953.22	January 17, 2008	ER-07-13 to ER-07-25 issued in 2007
7761	₱140,531,250.01	January 17, 2008	ER-07-12 issued in 2007
Total	₱225,711,203.23		

On May 14, 2012, the Fraud Audit and Investigation Office (FAIO), Legal Service Sector (LSS) of COA received a Certification sent by RDO 41 in compliance with the subpoena. The Certification, addressed to COA Director Leonor D. Boado, stated that Enviroaire declared gross sales amounting to ₱12,611,752.93 for taxable year 2008 per Income Tax Return (BIR Form 1702) and that the aggregate amount of ₱225,711,203.23 stated in the Official Receipt Nos. 7760 and 7761 was *not* included in Enviroaire’s declared gross income.¹⁰ *jr*

⁶ Q&A16 to Q&A18, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, pp. 872-873; Exhibit “P-4-a”, Docket, Vol. I, p. 553.
⁷ Urgent Motion for Leave to Travel Abroad, Docket, Vol. III, p. 1479.
⁸ Q&A19 to Q&A21 and Q&A25 to Q&A27, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. III, pp. 872-873, 874; Exhibit “P-4-a”, Treasurer’s Affidavit attached to the Article of Incorporation, Docket, Vol. I, p. 559; Exhibits “P-5-a” and “P-5-b”, Docket, Vol. I, p. 563; Exhibits “P-8-a” and “P-8-b”, Docket, Vol. I, p. 574.
⁹ Exhibit “P-1”, Docket, Vol. I, p. 544; Q&A7, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. III, p. 871.
¹⁰ Q&A10, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, p. 871; Exhibit “P-2”, Docket, Vol. I, p. 545.

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Accordingly, a Letter of Authority (LOA) No. 211-2012000000046 SN: eLA201100018418 dated June 6, 2012 was issued by Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares authorizing Revenue Officer (RO) Enrico Omaña and Group Supervisor Jose Pazcoguin, Jr. to examine Enviroaire's books of accounts and other accounting records under the Run After Tax Evaders (RATE) Program of the BIR.¹¹ The LOA was received by Enviroaire on June 6, 2012 through as certain Leinor Mojica.¹²

During the investigation the examiners obtained certified true copies the following documents relevant to the investigation from the SEC, BIR, the Ombudsman and COA:¹³

Exhibit No.	Description
"P-4"	SEC Certificate of Incorporation of Enviroaire, Company Registration No. A200204249 issued on March 13, 2002
"P-4-a"	Enviroaire's Articles of Incorporation
"P-5"	Enviroaire's General Information Sheet for the Year 2007
"P-6"	Enviroaire's Amended Annual Income Tax Return (BIR Form 1702) for CY 2007
"P-7"	Enviroaire's Return Information on the Tax Return for CY2008
"P-8"	Enviroaire's Audited Comparative Financial Reports for CY 2007 and 2008
"P-9"	RDO 41 Certification dated May 15, 2012
"P-10" to "P-23"	Sales in invoices issued by Enviroaire to PNP, ER-07-12 to ER-07-25 issued in 2007
"P-24"	PNP Check No. 457825 dated December 26, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱85,179,953.22
"P-24-a"	Enviroaire, Inc.'s Official Receipt No. 7760 dated January 17, 2008 in the amount of ₱85,179,953.22
"P-25"	PNP Check No. 457991 dated December 27, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱140,531,250.01
"P-25-a"	Enviroaire, Inc.'s Official Receipt No. 7761 dated January 17, 2008 in the amount of ₱140,531,250.01

¹¹ Q&A13 to Q&A15, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. III, p. 872; Exhibit "P-3", Docket, Vol. II, pp. 879 and 842.

¹² *Id.*

¹³ Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, pp. 870-878; Exhibits "P-4" to "P-25-a", Docket, Vol. I, pp. 552-603.

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Based on the investigation, a comparison of the gross sales declared by Enviroaire in its ITR for CY 2007 (₱27,585,555.35)¹⁴ with the amount paid by the PNP for services rendered and goods sold (₱225,711,203.23)¹⁵ allegedly disclosed substantial underdeclaration of sales.¹⁶

On June 7, 2012, after concluding the investigation of Enviroaire, CIR Kim Jacinto-Henares referred the case to the Department of Justice (DOJ) for preliminary investigation and the filing of the appropriate information in court.¹⁷ Thus, on even date, the complaint-affidavit of the examiners were filed with the DOJ.¹⁸

In a Resolution dated February 24, 2014, the Prosecutor General approved the recommendation that charges be filed against Tyrone N. Ong and Arlene Chua, President and Treasurer, respectively, for violation of Section 254 (Attempt to Evade or Defeat Tax) and 255 (Failure to Supply Correct and Accurate Information) in relation to Sections 253 and 256 of the NIRC, as amended.¹⁹

After filing the criminal complaint with the DOJ, the examiners also forwarded the case docket to the Assessment Division for the preparation of the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) with Formal Letter of Demand for the collection of deficiency internal revenue taxes.²⁰

CTA Proceedings

On June 10, 2014, an Information²¹ was filed before this Court, accusing Tyrone N. Ong and Arlene Chua, Enviroaire's President and Treasurer, respectively, with an *Attempt to Evade or Defeat Tax* for taxable year 2007, in violation of Section 254 in relation to Sections 253 and 256 of the NIRC, as amended.

On June 24, 2014, the accused moved for an Omnibus Motion for Judicial Determination of Probable Cause and to Hold in Abeyance 

¹⁴ Exhibit "P-6", Docket, Vol. I, p. 570.

¹⁵ Exhibits "P-24", "P-24-a", "P-25" and "P-25-a", Docket, Vol. I, pp. 600-603.

¹⁶ Q&A32, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, p. 875.

¹⁷ Letter to the Secretary of Justice dated June 7, 2012, attachment to July 21, 2014 Compliance, Docket, Vol. I, pp. 342-344.

¹⁸ DOJ Resolution dated February 24, 2014, attachment to July 21, 2014 Compliance, Docket, Vol. I, pp. 361-371.

¹⁹ DOJ Resolution dated February 24, 2014, attachment to July 21, 2014 Compliance, Docket, Vol. I, pp. 345-360.

²⁰ Q&A43, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. III, p. 876-877.

²¹ Docket, Vol. I, pp. 4-7.

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Issuance of Warrant of Arrest and/or to Recall Warrant of Arrest Issued Against Accused Tyrone N. Ong and Arlene Chua.²² The accused prayed for the outright dismissal of the case claiming that there is no evidence to establish probable cause against them.

Meanwhile, in the Resolution dated July 1, 2014,²³ the Court found that the:

- Records attached to, and in support of, the Information dated June 10, 2014 were mere photocopies; and,
- Approval of the Commissioner of Internal Revenue (CIR) to file the criminal case under Section 220²⁴ of the NIRC, as amended, was not submitted.

Thus, the Court held in abeyance the determination of probable cause while ordering the prosecution to comply.

On July 21, 2014, the prosecution filed a Compliance²⁵ submitting therewith the documents required by the Court.

In a Resolution dated August 1, 2014,²⁶ after a careful evaluation of the Information and its supporting documents, the Court found probable cause to issue warrants of arrest against accused Tyrone N. Ong and Arlene Chua. Accordingly, Warrants of Arrest²⁷ against the accused were issued on August 12, 2014.

However, as per the Return Slip²⁸ dated September 1, 2014, Warrant Officer SPO3 Romeo P. Rico claimed that the accused could not be found at the given addresses. As such, in the Resolution²⁹ dated September 22, 2014, the Court ordered the issuance of alias warrants of arrest against the accused. Consequently, Alias Warrants of Arrest³⁰ *Je*

²² *Id.*, pp. 178-206.

²³ Docket, Vol. I, pp. 335-338.

²⁴ "SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner."

²⁵ Docket, Vol. I, pp. 339-341.

²⁶ *Id.*, pp. 397-398.

²⁷ *Id.*, pp. 405-406.

²⁸ *Id.*, p. 408.

²⁹ *Id.*, p. 412.

³⁰ *Id.*, pp. 413-414.

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were issued against Tyrone N. Ong and Arlene Chua on October 8, 2014.

On February 24, 2015, the prosecution filed a Motion for Leave of Court to File Amended Information³¹ to implead the corporation Enviroaire, where the accused are the responsible officers thereof.

Finding merit, the Motion was granted by this Court as per the Resolution³² dated March 10, 2015, thereby admitting the attached Amended Information.

As such, the accusatory portion of the Amended Information³³ dated January 12, 2015, reads:

"That on or about April 15, 2008, in the city of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the Accused **TYRONE N. ONG** and **ARLENE CHUA**, being the President and Treasurer, respectively, of **ENVIROAIRE, INC.**, a domestic corporation registered as a taxpayer with Revenue District Office (RDO) No. 041 – Mandaluyong City under BIR Tax Identification No. 218-084-255-00, and at the time required by law, rules and regulations to pay taxes for the said corporation, in conspiracy with one another, did then and there willfully, unlawfully and feloniously attempt to evade or defeat the payment of correct income tax, as said accused under-declared ENVIROAIRE, INC.'s gross sales and income for taxable year 2007 by not including the aggregate amount of ₱225,711,203.23 as shown in Official Receipt Nos. 7760 and 7761 issued by ENVIROAIRE, INC. to PNP Finance Center, in order to conceal ENVIROAIRE, INC.'s true income which resulted to its basic deficiency income tax of Seventy-Nine Million Three Hundred Eighty-Three Thousand Two Hundred Twenty-Six Pesos and Ten Centavos (₱79,383,226.10), more or less, for taxable year 2007, exclusive of surcharge and interests, to the damage and prejudice of the government.

CONTRARY TO LAW." 

³¹ *Id.*, pp. 415-417.

³² *Id.*, pp. 423-425.

³³ *Id.*, pp. 418-421.

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In a Resolution dated October 15, 2015,³⁴ in view of the Amended Information and considering that the accused were still at-large, the Court ordered the issuance of new warrants of arrest against Tyrone N. Ong and Arlene Chua. Accordingly, new Warrants of Arrest³⁵ were issued on October 20, 2015.

However, in the Officer's Return of Warrant of Arrest³⁶ dated November 13, 2015, Police Chief Inspector Rogelio DB De Lumen, Jr., Chief, Warrant and Subpoena Section of the Criminal Investigation and Detection Unit (WSS-CIDU) of the Quezon City Police District, claims that the accused cannot be located or found in the given addresses. Therefore, in the Resolution³⁷ dated December 18, 2015, this Court again ordered the issuance of alias warrants of arrest against the accused. Hence, Alias Warrants of Arrest³⁸ against Tyrone N. Ong and Arlene Chua were again issued on January 14, 2016.

Meanwhile, in the Return of Warrant of Arrest³⁹ dated January 21, 2016, PO3 Johnny N. Montilla, Warrant Officer of the Madaluyong City Police Station, stated that the warrants have been served but the subject persons, however, cannot be found at the given address. The same was noted by this Court in the Resolution⁴⁰ dated March 1, 2016, which thereby reiterated the issued alias warrants of arrest.

Thereafter, on March 10, 2016, the accused Tyrone N. Ong and Arlene Chua, with the assistance of *counsel de parte*, Atty. J. Ricardo H. Moreño, voluntarily appeared and submitted themselves to the jurisdiction of this Court. The accused posted the required bail, via cash bond, for their provisional liberty in the amount of ₱20,000.00 each. As such, in the Order⁴¹ dated March 10, 2016, this Court accepted and approved the accused's cash bond thereby lifting and setting aside the warrants of arrest issued on October 20, 2015 and alias warrants of arrest dated January 14, 2016. Arraignment of the accused was also set on April 6, 2016 at 9:00 a.m.

After failing to appear in court several times, the accused Tyrone N. Ong and Arlene Chua, assisted by their *counsel de parte*, Atty. Yasser Ismail A. Abbas, were arraigned on June 8, 2016 and entered 

³⁴ *Id.*, pp. 427-428.

³⁵ *Id.*, pp. 429-430.

³⁶ *Id.*, p. 432.

³⁷ *Id.*, pp. 439-440.

³⁸ *Id.*, pp. 441-443.

³⁹ *Id.*, p. 445.

⁴⁰ *Id.*, pp. 451-452.

⁴¹ *Id.*, pp. 467-469.

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their pleas of "NOT GUILTY" to the crime charged.⁴² After which preliminary conference and pre-trial were scheduled on July 13, 2016 and September 7, 2016, respectively.

Then, on June 23, 2016, the accused filed a Motion to Dismiss Based on Forum Shopping.⁴³ The accused prayed that the present case be dismissed considering that there is another pending action before the CTA Third Division involving the same parties and originating from the same transaction.

In the meantime, on June 28, 2016, a PAN for taxable year 2007 was issued by the BIR. It was served by registered mail to Enviroaire's registered addresses:

- No. 40 Shaw Boulevard, Bagong Silang, Mandaluyong City; and,
- 8th Floor Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City.

The PAN was also mailed to the accused's address on record: 1440 J. Abad Santos Street, Tondo, Manila.⁴⁴

On July 26, 2016, the FAN and the Formal Letter of Demand (FLD) for taxable year 2007 were issued and the same were also served by registered mail to the corporation and the accused officers to their registered addresses.⁴⁵

In the Resolution dated September 5, 2016,⁴⁶ the Court denied the accused's motion to dismiss explaining that even though originating from the same transaction, a single act or incident might offend two or more entirely distinct and unrelated provisions of law, thereby justifying the filing of several charges against the accused.⁴⁷

On September 23, 2016, the accused filed a Motion for Reconsideration of the Resolution Denying Accused-Movant's Motion to Dismiss.⁴⁸ The accused insists that the simultaneous filing of criminal cases against them for violation of Sections 254 and 255 of the NIRC, as amended, based on the same act constitutes forum-shopping. *je*

⁴² Order dated June 8, 2016, *Id.*, pp. 511-513; and Certificates of Arraignment, *Id.*, pp. 514-515.

⁴³ Docket, Vol. I, pp. 523-533.

⁴⁴ Q&A43-Q&A44, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, pp. 876-877.

⁴⁵ Q&A45-Q&A46, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, p. 877.

⁴⁶ Docket, Vol. II, pp. 649-654.

⁴⁷ *Citing People of the Philippines v. Renato C. Corona*, Crim. Case Nos. O-356 to O-367, April 6, 2015.

⁴⁸ Docket, Vol. II, pp. 663-668.

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Meanwhile, on October 18, 2016, accused Tyrone N. Ong filed a Very Urgent Motion for Leave to Travel Abroad⁴⁹ praying that he be permitted to travel to Beijing, China on October 20-21, 2016 upon posting of travel bond. Nevertheless, in the Resolution⁵⁰ dated October 26, 2016, accused Tyrone N. Ong's motion was rendered moot and academic considering that there was no reasonable time for the prosecution to file their comment and also because the intended dates of travel have already lapsed.

On December 20, 2016, a Resolution⁵¹ was promulgated by this Court denying the accused's Motion for Reconsideration of the Resolution Denying Accused-Movant's Motion to Dismiss. The Court reiterated its previous ruling that violation of Sections 254 and 255 required different elements for their commission which are considered separate acts.

Undaunted, the accused filed a Petition for Certiorari⁵² with the CTA Court *En Banc* on February 17, 2017. The accused elevated the matter to the Court *En Banc* claiming that the CTA First Division acted with grave abuse of discretion tantamount to lack or excess of jurisdiction when it denied their motion to dismiss based on forum shopping.

Shortly thereafter, on February 20, 2017, the accused filed a Motion to Withdraw Petition for Certiorari⁵³ stating that pursuant to the case of *Santos v. People of the Philippines* (585 Phil. 117, 2008) the accused withdraws the Petition and will instead refile it with the Supreme Court.

Meanwhile, on September 2, 2016, the prosecution filed their Plaintiff's Pre-Trial Brief⁵⁴ and, an Amended Pre-Trial Brief⁵⁵ was subsequently filed on March 21, 2017. The accused, on the other hand, filed their Pre-Trial Brief⁵⁶ on March 21, 2017. *jr*

⁴⁹ *Id.*, pp. 678-681.

⁵⁰ *Id.*, p. 684.

⁵¹ *Id.*, pp. 690-693.

⁵² *Id.*, pp. 700-716.

⁵³ *Id.*, pp. 767-769.

⁵⁴ *Id.*, pp. 638-642.

⁵⁵ *Id.*, pp. 775-779.

⁵⁶ *Id.*, pp. 770-774.

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After several resetting, the pre-trial conference was held on July 5, 2017, and the parties were given a period of fifteen (15) days within which to submit their Joint Stipulation of Facts and Issues (JSFI).⁵⁷

Thus, on July 20, 2017, the parties filed their Joint Stipulation of Facts and Issues,⁵⁸ which contained, among others, the following admitted facts:

1. The jurisdiction of the Honorable Court over the persons of the accused.
2. The jurisdiction of the Honorable Court over the offense charged.
3. The identities of the accused, Tyrone N. Ong and Arlene Chua.
4. When the BIR filed the instant case against the accused with the Department of Justice, it has not yet issued the Preliminary Assessment Notice (PAN) and the Final Assessment Notice with Formal Letter of Demand (FAN/FLD) against Enviroaire, Inc.

In the Resolution⁵⁹ dated August 4, 2017, the Court approved the parties' JSFI and deemed the pre-trial conference terminated. Consequently, a Pre-Trial Order⁶⁰ was issued on August 18, 2017.

Prosecution's Evidence

As trial ensued, the prosecution presented and offered the testimony of the following witnesses: Revenue Officer (RO) Enrico L. Omaña, Atty. Joffre Gil C. Zapata and Atty. Alma G. Cagat-Cagat.

The prosecutions' first witness, **RO Enrico L. Omaña**, is a Special Investigator I previously assigned at the Regional Investigation Division of the BIR – Revenue Region No. 7, Quezon City. His testimony was primarily offered to prove that Enviroaire sold goods/services to *Je*

⁵⁷ Order dated July 5, 2017, *id.*, pp. 843-845.

⁵⁸ Docket, Vol. II, pp. 849-853.

⁵⁹ *Id.*, p. 856.

⁶⁰ *Id.*, pp. 858-866.

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the PNP and that it did not declare the said sales in its Annual Income Tax Returns for taxable year 2007 and 2008.

In his Judicial Affidavit⁶¹ dated August 31, 2017, RO Omaña testified that as a Special Investigator, he was authorized to investigate taxpayers for internal revenue tax purposes, submit reports thereon, and recommend their prosecution for criminal violations of the provisions of the NIRC, as amended, when warranted. His authority to investigate Enviroaire was derived from the LOA dated June 6, 2012 issued by then Commissioner Kim S. Jacinto-Henares, authorizing him and Jose Pazcoguin, Jr. to examine Enviroaire's books of accounts and other accounting records for the period January 1, 2007 to December 31, 2007. The said LOA was served to the Company on the same day it was issued.

Witness RO Omaña also explained that Enviroaire was the subject of investigation because of a *Subpoena Duces Tecum* dated April 26, 2012 issued by Director Leonor D. Boado of FAIO-COA. Director Boado ordered RDO 41 – Mandaluyong City, to issue a Certification as to whether the amounts of ₱85,179,953.22 under Official Receipt No. 7760 dated January 17, 2008, and ₱140,531,250.01 under Official Receipt No. 7761 dated January 17, 2008, which were issued to the PNP Finance Center, were included in the total gross sales declared by Enviroaire in its tax returns filed for calendar years 2007 or 2008.

As such, RDO 41 – Mandaluyong City issued a Certification stating that Enviroaire had declared gross sales amounting to ₱12,611,752.93 for taxable year 2008 and that the aggregate amount of ₱225,711,203.23 under Official Receipt Nos. 7760 and 7761 was not included in the declared gross sales.

RO Omaña further testified that in the course of their investigation, they found that by comparing the gross sales declared by Enviroaire in its ITR for taxable year 2007 with the amount paid by the PNP for services rendered and goods sold, Enviroaire substantially underdeclared its sales that year.

In fact, as proof of Enviroaire's gross sales to the PNP, it issued fourteen (14) invoices to the PNP: Invoice Nos. ER-07-012, ER-07-013, ER-07-014, ER-07-015, ER-07-016, ER-07-017, ER-07-018, ER-07-019, 

⁶¹ Exhibit "P-29", Docket, Vol. II, pp. 870-878.

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ER-07-020, ER-07-021, ER-07-022, ER-07-023, ER-07-024 and ER-07-025.

Furthermore, RO Omaña stated that COA Director Boado furnished them certified photocopies of Enviroaire's Official Receipt Nos. 7760 and 7761 in the amounts of ₱85,179,953.22 and ₱140,531,250.01, respectively, both dated January 17, 2008; and, also, duplicate copies of Check Nos. 457825 dated December 26, 2007 and 457991 dated December 27, 2007 duly issued by PNP.

RO Omaña also confirmed that Enviroaire, with Tax Identification Number (TIN) 218-084-255-000 and with registered address at 140 Shaw Boulevard, Bagong Silang, Mandaluyong City, is a registered value added tax (VAT) taxpayer of RDO 41 – Mandaluyong City. Omaña testified that names of the accused Tyrone N. Ong and Arlene Chua with their respective positions as President and Treasurer of Enviroaire, Inc. with their corresponding signatures are found in the Statement of Management's Responsibility for Financial Statements.

After concluding their investigation on June 7, 2012, RO Omaña and his team filed a criminal complaint with the DOJ charging Enviroaire and its officers, accused Tyrone N. Ong, as President, and Arlene Chua, as Treasurer, for violation of Sections 254 and 255, in relation to Sections 253 and 256 of the NIRC, as amended.

After filing the criminal case, the case docket was forwarded to the Assessment Division for the preparation of the PAN and Formal FLD/FAN for the collection of deficiency internal revenue taxes of Enviroaire.

Lastly, RO Omaña stated that a PAN was issued on June 28, 2016 and was served by registered mail to Enviroaire, Inc.'s registered addresses: No. 40 Shaw Boulevard, Bagong Silang, Mandaluyong City; and, 8/F Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City. Moreover, a copy of which was also mailed to the accused's address on records: 1440 J, Abad Santos Street, Tondo, Manila.

Thereafter, the FAN and FLD for taxable year 2007 were issued on July 26, 2016 and were served by registered mail to the addresses above mentioned. *Je*

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On cross examination, RO Omaña admitted that he was assigned at BIR Revenue Region No. 7, Quezon City when the *Subpoena Duces Tecum* dated April 26, 2012 by COA was issued. Furthermore, he said that he did not personally receive the Certification issued by the RDO 41 – Mandaluyong City, or have personal knowledge as to the Certification issued by RDO – Mandaluyong City to the COA. He was only authorized to investigate Enviroaire for the year 2007 pursuant to a LOA which was served on June 6, 2012 and, incidentally, filed the criminal complaint with the DOJ the next day, on June 7, 2012. RO Omaña also confirmed that four (4) years had passed from the time the accused filed their ITR up to when the LOA was issued and that the PAN and the FAN for 2007 were respectively issued only on June 28, 2016 and July 26, 2016 which were eight (8) years after the ITR was filed and four (4) years after the present criminal case was filed against Enviroaire and its officers.

On re-direct examination, however, RO Omaña clarified that the case was filed with the DOJ since there was underdeclaration of more than 30% of the income of Enviroaire.

As to the next prosecution witness, **Atty. Alma G. Cagat-Cagat** was previously designated as the Officer-in-Charge (OIC) of the Records Division of the Office of the Special Prosecutor (OSP), Ombudsman. Her testimony was primarily offered to prove that she certified as true copies of the originals Enviroaire's Invoice No. ER-07-012 and Official Receipt No. 7761. In her Judicial Affidavit dated December 1, 2017,⁶² she testified that, as OIC at that time, her duties and responsibilities included: (a) acting as custodian of all the files, documents, records forwarded for prosecution of cases being handled by the OSP; (b) certifying the reproduction of the files, records, documents under her custody; (c) supervision and monitoring over the operation of the Records Division; and, (d) performing any tasks assigned to her from time to time. She further stated that she recalled having certified as true copies of the originals, Invoice No. ER-07-012 dated December 27, 2008 and Official Receipt No. 7761 dated January 17, 2008 relative to Enviroaire.

On cross examination, Atty. Cagat-Cagat confirmed that one of her duties is to certify the reproduction of the files, records and the documents under her custody. However, she cannot attest whether the documents under her custody were provided by the accused to the

⁶² Exhibit "P-31"; Docket, Vol. II, pp. 896-898.

BIR, and that she also has no personal knowledge whether the accused paid the right taxes thereto.

During the May 2, 2018 hearing, when the prosecution was about to present the last witness, **Atty. Joffre Gil C. Zapata**, the parties' respective counsels instead offered to stipulate and agreed on the following matters:

Stipulations for the prosecution

- 1. That Atty. Zapata issued a certified true copy of the Exhibits "P-11" to "P-25"; and
- 2. That these documents were provided by Atty. Zapata to the Bureau of Internal Revenue (BIR) particularly BIR Region No. 7.

Counter-stipulations for the accused

- 1. That the witness, Atty. Zapata has no personal knowledge as to the preparation and execution of the said documents; and
- 2. That likewise Atty. Zapata has no personal knowledge as to the criminal charge filed before this Honorable Court.⁶³

On May 4, 2018, the prosecution filed a Formal Offer of Evidence,⁶⁴ tendering the following documentary exhibits, viz.:

Exhibits	Description
"P-1"	<i>Subpoena Duces Tecum</i> signed by Director Leonor D. Boado of the Fraud Audit and Investigation Office, Legal Services Sector of the Commission on Audit dated April 26, 2012
"P-2"	Revenue District Officer Isabel A. Paulino's Certification in response to the Subpoena of FAIO LSS COA
"P-3"	Letter of Authority No. 211-2012-00046 SN: eLA201100018418 dated June 6, 2012 for taxable year 2007
"P-4"	Enviroaire, Inc.'s Certificate of Incorporation with the Securities and Exchange Commission (SEC) with Company Reg. No. A200204249 issued on March 13, 2002

⁶³ Docket, Vol. II, pp. 1122-1123.
⁶⁴ Docket, Vol. II, pp. 1124-1132.

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"P-4-a"	Enviroaire, Inc.'s Articles of Inc
"P-5"	Enviroaire, Inc.'s General Information Sheet (GIS) for the year 2007 filed with the SEC of October 8, 2007
"P-5-a"	Name and position of Tyrone N. Ong as President of Enviroaire, Inc.
"P-5-b"	Name and position of Arlene Chua as CFO of Enviroaire, Inc.
"P-6"	Enviroaire, Inc.'s Annual Income Tax Return (BIR Form 1702) for taxable year 2007
"P-7"	Return Information on the Tax Return filed by Enviroaire, Inc. for taxable year 2008 as received by the BIR
"P-8"	Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
"P-8-a"	Name and position of Tyrone Ong as President in Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
"P-8-b"	Name and position of Arlene Chua as Treasurer in Enviroaire, Inc.'s Financial Reports for December 31, 2008 and 2007
"P-9"	Certification of then RDO Isabel A. Paulino dated May 15, 2012 that Enviroaire, Inc. is a registered VAT taxpayer
"P-10"	Invoice No. ER-07-012
"P-11"	Invoice No. ER-07-013
"P-12"	Invoice No. ER-07-014
"P-13"	Invoice No. ER-07-015
"P-14"	Invoice No. ER-07-016
"P-15"	Invoice No. ER-07-017
"P-16"	Invoice No. ER-07-018
"P-17"	Invoice No. ER-07-019
"P-18"	Invoice No. ER-07-020
"P-19"	Invoice No. ER-07-021
"P-20"	Invoice No. ER-07-022
"P-21"	Invoice No. ER-07-023
"P-22"	Invoice No. ER-07-024
"P-23"	Invoice No. ER-07-025
"P-24"	PNP Check No. 457825 dated December 26, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱85,179,953.22
"P-24-a"	Enviroaire, Inc.'s Official Receipt No. 7760 dated January 17, 2008 in the amount of ₱85,179,953.22
"P-25"	PNP Check No. 457991 dated December 27, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱140,531,250.01
"P-25-a"	Enviroaire, Inc.'s Official Receipt No. 7761 dated January 17, 2008 in the amount of ₱140,531,250.01
"P-26"	Preliminary Assessment Notice with Details of Discrepancies dated June 28, 2016 issued to Enviroaire, Inc. for taxable year 2007
"P-27"	Formal Letter of Demand No. 041-B050-07 (50%) dated July 26, 2016 issued to Enviroaire, Inc. for taxable year 2007
"P-28"	Assessment Notice for Income Tax (IT) for taxable year 2007
"P-28-a"	Assessment Notice for Value-Added Tax (VAT) for taxable year 2007
"P-29"	Judicial Affidavit of Revenue Officer (RO) Enrico L. Omaña
"P-29-a"	Name and Signature of RO Enrico Omaña

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"P-31"	Judicial Affidavit of Atty. Alma G. Cagat-Cagat – OIC Records Division, Office of the Special Prosecutor, Ombudsman
"P-31-a"	Name and Signature of Atty. Alma G. Cagat-Cagat

In the Resolution dated August 1, 2018,⁶⁵ the Court admitted all of the prosecution’s evidence. Also, as previously manifested during the last hearing, the accused was granted leave of court to file demurrer to evidence within ten (10) days.

On August 7, 2018, the accused filed a Demurrer to Evidence⁶⁶ praying that the present case be dismissed since the prosecution’s evidence failed to prove beyond reasonable doubt that the accused are guilty of the crime charged against them.

However, in the Resolution dated October 5, 2018,⁶⁷ the Court found that, based on the evidence offered by the prosecution, there existed a *prima facie* case against the accused. The Demurrer to Evidence was denied for lack of merit.

On October 29, 2018, the accused filed a Motion for Reconsideration⁶⁸ claiming that the Court committed serious and reversible error when it denied the accused’s demurrer to evidence.

In the Resolution dated January 24, 2019,⁶⁹ the Court denied the accused’s motion for reconsideration stating that the issues raised therein were already extensively discussed in the previous resolution. As such, the Court ordered the case to proceed and set the initial presentation of evidence for the accused.

Meanwhile, on March 13, 2019, the accused filed a Manifestation (With Urgent Motion to Suspend Proceedings).⁷⁰ The accused stated that they filed with the Supreme Court a Certiorari and Prohibition under Rule 65 of the Revised Rules of Court, seeking to annul, reverse and set aside the Resolutions dated October 5, 2018 and January 24, 2019. Accordingly, the accused requested the Court to suspended proceedings as a matter of judicial courtesy pending the resolution of the incident by the Supreme Court. 

⁶⁵ Docket, Vol. III, pp. 1285-1286.
⁶⁶ *Id.*, pp. 1294-1315.
⁶⁷ *Id.*, pp. 1391-1400.
⁶⁸ *Id.*, pp. 1403-1421.
⁶⁹ *Id.*, pp. 1555-1557.
⁷⁰ Docket, Vol. V, pp. 2628-2634.

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However, in the Order dated March 18, 2019,⁷¹ the Court denied the accused's urgent motion to suspend proceedings, taking into account the objection interposed by the prosecution that the filing of a Certiorari and Prohibition with the Supreme Court is *not* a ground for suspension of proceedings.

On March 27, 2019, the accused filed a Motion for Reconsideration (Re: Denial of Motion to Suspend Proceedings)⁷² reiterating its plea. The same was denied by the Court for lack of merit in the Order dated April 1, 2019.⁷³

Accused's Evidence

Thereafter, counsel for the accused presented accused Tyrone N. Ong as its *lone* witness.

Accused **Tyrone N. Ong** testified on direct by way of Judicial Affidavit dated April 10, 2019,⁷⁴ that while he is the President of Enviroaire Inc., he also functions as the Public Relations Officer of the company. As a Public Relations Officer, he meets and courts potential clients and close deals with them. He also makes sure that clients are satisfied and pleased with their products. The accused explained that his company is primarily engaged in the business of emission testing and supply of equipment and other related products, including parts and accessories, and is engaged in the refurbishing of Light Armored Vehicles. They recondition and rehabilitate old Light Armored Vehicles or tanks of the PNP, including supplying the needed parts thereto.

Accused Ong asserted that the criminal case for alleged tax evasion was actually initiated by the COA as there was an investigation on the refurbishing of the Light Armored Vehicles or tanks by the PNP. In fact, he claimed that he only came to know of the case when he was informed by their previous lawyer that a complaint was filed with the DOJ. He further explained that he and/or his wife as co-accused never received the LOA or request for conference from the BIR. He also said that neither he nor his wife received any communication or *Je*

⁷¹ *Id.*, p. 2691.

⁷² *Id.*, pp. 2693-2699.

⁷³ *Id.*, p. 2701.

⁷⁴ Exhibit "A-1", Docket, Vol. V, pp. 2702-2714.

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assessment notices from the BIR prior to the filing of the case with the DOJ.

Accused Ong further testified that the LOA was never received by Enviroaire or any of its authorized representative. It was received by a Leinor Mojica who is not an officer or authorized representative of Enviroaire, Inc. He claims that the BIR hastily filed the present case without first conducting a formal investigation as shown by the fact that although the LOA was issued only on June 6, 2012 immediately on the next day, June 7, 2012, a criminal complaint was already filed with the DOJ. The BIR did not give them time to present documents or undergo a formal investigation in violation of the standard procedure under BIR RMO No. 27-10. He was merely shown copies of Sales Invoice No. ER-07-012, the Certification by RDO 41 – Mandaluyong City, and the Official Receipt dated January 17, 2008 which were used as basis of the complaint affidavit. In addition, accused Ong claimed that there is a statement at the bottom of the sales invoice that reads, *"this invoice is not recognized as paid unless covered by an Official Receipt."* As such, the sales invoice is not a proof of payment or receipt of any payment. Lastly, accused Ong asserts that he has never examined any BIR form of Tax Return line by line. He is not involved with the finances of the corporation. His wife has zero involvement in the company and was only named as Treasurer because he is his wife, though he is sure that Enviroaire filed its Income Tax Return for taxable year 2007.

On cross examination, accused Ong explained that Leinor Mojica is an ordinary staff and is not an authorized representative of Enviroaire. In addition, although accused Ong was not familiar with Enviroaire's Income Tax Return for the year 2007, he *admitted* that Sales Invoice No. ER 07-012 and Official Receipts previously marked as Exhibits "P-10" and "P-25-a", respectively, were issued by Enviroaire.⁷⁵

Lastly, the Court granted the motion of the defense counsel that it be allowed to adopt the prosecution's Exhibits "P-10", "P-25-a" and "P-2", as part of the exhibits of the accused and, thus, be considered as common exhibits. Thereafter, counsel for the accused also offered Exhibits "A-1", "A-1-A", "P-10", "P-25-a" and "P-2" which were, likewise, admitted by the Court. The parties were then given a period of thirty (30) days within which to file their memoranda. *Re*

⁷⁵ Transcript of Stenographic Notes (TSN) dated April 22, 2019, pp. 8-9.

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In compliance, the accused filed their Memorandum (For Accused)⁷⁶ on May 21, 2019. On the other hand, the prosecution failed to file a memorandum as per Records Verification dated June 7, 2019.⁷⁷

Accordingly, in the Resolution dated June 14, 2019,⁷⁸ the case was deemed submitted for decision.

THE ISSUE

The sole issue to be resolved herein, as submitted by the parties⁷⁹ is whether accused Ong and Chua are guilty beyond reasonable doubt for the crime of Attempt to Evade or Defeat Tax, in violation of Section 254, in relation to Sections 253 and 256 of the NIRC, as amended.

THE COURT'S RULING

Summary

The accused were charged with the crime of an attempt to evade or defeat the payment of income tax for taxable year 2007, pursuant to Section 254 of the NIRC, as amended. It is the prosecution's theory that the crime was committed by accused Ong and Chua because they underdeclared Enviroaire's gross sales and taxable income for 2007 by *excluding* the aggregate amount of ₱225,711,203.23, evidenced by Official Receipt Nos. 7760⁸⁰ and 7761⁸¹ issued by Enviroaire to the PNP Finance Center, in order to conceal its true income which resulted in basic deficiency income tax of ₱79,383,226.10, more or less, for taxable year 2007, exclusive of surcharge and interests.

On the other hand, the accused claimed that there is nothing on record that would show that the alleged income was gained during the taxable year 2007. They assert that the prosecution failed to establish *Je*

⁷⁶ Docket, Vol. V, pp. 2820-2851.

⁷⁷ *Id.*, p. 2852.

⁷⁸ *Id.*, p. 2853.

⁷⁹ Issue to be Resolved, JSFI, Docket, Vol. II, p. 849.

⁸⁰ Exhibit "P-24-a", Docket, Vol. I, p. 601.

⁸¹ Exhibit "P-25-a", Docket, Vol. I, p. 603.

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that Enviroaire actually or constructively received the amounts indicated in said Official Receipts Nos. 7760 and 7761 during the taxable year 2007. The accused testified that the official receipts were both issued on January 17, 2008 and the checks were not received in the year 2007. Furthermore, the accused pointed out that the sales invoice clearly stated that "this sales invoice is not recognized as paid unless covered by an Official Receipt". Therefore, there was no obligation to declare the same in the ITR of Enviroaire for taxable year 2007.

The accused, furthermore, maintained that there was no due process afforded to them. They contended that the prosecution miserably failed to prove that the PAN⁸² dated June 28, 2016 and FLD/FAN⁸³ dated July 26, 2016 were indeed received by the accused. The prosecution merely stated that the BIR issued these notices to the accused through registered mail but there was no proof that the same were duly received by the accused or any authorized representatives of Enviroaire. As such, the accused claimed that the assessment had already prescribed considering that Enviroaire's ITR for 2007 was filed in April 2008, however, records show that the PAN, FAN and FLD were all issued only in 2016.

General Discussion on Criminal Law

At the outset, it must be stressed that an assessment is *not* necessary prior to the filing of a criminal complaint. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*,⁸⁴ the Supreme Court held that an assessment is not necessary before the filing of criminal complaint because the latter is instituted not to demand payment, but to penalize the taxpayer for violation of the tax code, thus:

"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

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⁸² Exhibit "P-26", Docket, Vol. I, pp. 604-607.

⁸³ Exhibit "P-27", Docket, Vol. II, pp. 1133-1136.

⁸⁴ G.R. No. 128315, June 29, 1999.

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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 NLRC, 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.

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." (*Underscoring supplied*)

Consistent with this holding, the criminal action was instituted with the filing the complaint-affidavit at the DOJ on June 7, 2012⁸⁵ prior to the issuance of a FAN/FLD on July 26, 2016.⁸⁶

The Court shall now proceed to determine whether accused Ong and Chua are guilty beyond reasonable doubt for the crime of "Attempt to Evade or Defeat Tax" under Section 254, in relation to Sections 253 and 256 of the NIRC, as amended.

Proof beyond reasonable doubt confers the prosecution with the responsibility of establishing *moral certainty*. Section 2, Rule 133 of the Rules on Court explains the concept of *proof beyond reasonable doubt*, viz.: 

⁸⁵ DOJ Resolution dated February 24, 2014, attachment to July 21, 2014 Compliance, Docket, Vol. I, pp. 361-371.

⁸⁶ Q&A45-Q&A46, Judicial Affidavit of Enrico L. Omaña, BIR Special Investigator, Docket, Vol. II, p. 877.

**"Rule 133
WEIGHT AND SUFFICIENCY OF EVIDENCE**

XXX XXX XXX

SEC. 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."
(*Underscoring supplied*)

***Elements of Section 254 in
relation to Sections 253 and 256
of the NIRC, as amended***

At the core of this issue are the provisions of Sections 253(d), 254 and 256 of the NIRC, as amended, which state:

**"TITLE X
STATUTORY OFFENSES AND PENALTIES**

XXX XXX XXX

**CHAPTER II
CRIMES, OTHER OFFENSES AND FORFEITURES**

SEC. 253. *General Provisions.* –

(a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further *2*

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proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

(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) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interest and surcharges due from the taxpayer, whichever is higher.

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 the 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 conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

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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).”
(*Underscoring supplied*)

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*,⁸⁷ the Supreme Court held that tax evasion connotes the integration of three (3) factors:

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; *re*

⁸⁷ G.R. No. 147188, September 14, 2004.

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2. An accompanying state of mind which is described as being "evil", in "bad faith", "willful", or "deliberate and not accidental"; and,

3. A course of action or failure of action which is unlawful.

Accordingly, to sustain conviction for an attempt to evade or defeat tax under Section 254 in relation to Sections 253(d) and 255, the following elements must be established beyond reasonable doubt:

1. There is a tax is imposed on the corporation under the NIRC;⁸⁸

2. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof;

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

4. In the case of corporations, the penalty shall be imposed on the president, general manager, branch manager, treasurer, officer-in-charge, and the employees *responsible* for the violation.

1ST ELEMENT: There is a tax imposed on the corporation under the NIRC

a. Enviroaire is a domestic corporation subject to income tax under Section 27(A) in relation to Section 23(E) and Value-Added Tax (VAT) under Sections 105, 106(A) and 108(A) of the NIRC, as amended.

In *Bureau of Internal Revenue v. Court of Appeals, et al.*,⁸⁹ the Supreme Court reiterated the holding that although a deficiency *je*

⁸⁸ *Bureau of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 197590, November 24, 2014.

⁸⁹ G.R. No. 197590, November 24, 2014.

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assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.

As a domestic corporation,⁹⁰ Enviroaire is taxed on income from all sources, both within and outside the Philippines.⁹¹ An income, for it to be taxable, requires that there must be a gain *realized* or received by the taxpayer, which is *not* excluded by law or treaty from taxation.⁹²

Specifically, Enviroaire is liable to pay 35% corporate income tax under Section 27(A) of the NIRC, as amended.⁹³ As a VAT-registered 

⁹⁰ Exhibit "P-4" and "P-4-a", SEC Certificate of Incorporation and Articles of Incorporation, Docket, Vol. I, pp. 552-559; Exhibit "P-6", Notes to Audited Financial Statements, Docket, Vol. I, p. 580; Q&A6, Judicial Affidavit of Tyrone N. Ong, Exhibit "A-1", Docket, Vol. V, p. 2705.

⁹¹ Section 23(E) of the NIRC states:

**"TITLE II
TAX ON INCOME
CHAPTER II
GENERAL PRINCIPLES**

SEC. 23. *General Principles of Income Taxation in the Philippines.* - Except when otherwise provided in this Code:

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;

(B) A nonresident citizen is taxable only on income derived from sources within the Philippines;

(C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income derived from sources within the Philippines: Provided, That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker;

(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;

(E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; and

(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines." (*Underscoring supplied*)

⁹² *Bureau of Internal Revenue, et al. v. Court of Appeals, et al.*, G.R. No. 197590, November 24, 2014.

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**"CHAPTER IV
TAX ON CORPORATIONS**

SEC. 27. *Rates of Income tax on Domestic Corporations.* -

(A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%). (As amended by R.A. 9337)

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taxpayer⁹⁴ engaged in the business of selling goods and services,⁹⁵ Enviroaire is also subject to 12% VAT under Sections 105, 106(A) and 108(A) of the NIRC, as amended.⁹⁶ *gc*

⁹⁴ Exhibit "P-9", Certification of RDO 41 that Enviroaire is a VAT-registered taxpayer, Docket, Vol. I, p. 585; Exhibit "P-24-a" and Exhibit "P-25-a", Enviroaire VAT Official Receipts, Docket, Vol. I, pp. 601 and 603.

⁹⁵ Exhibit "P-4-a", Primary Purpose of the Corporation, Docket, Vol. I, p. 553; Exhibit "P-5", General Information Sheet for CY 2007, Docket, Vol. I, p. 561.

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"SEC. 105. *Persons Liable.* - Any person who, in the course of trade or business, sells barter, 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.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase '**in the course of trade or business**' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

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SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* -

(A) **Rate and Base of Tax.** - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the 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 1/2%).

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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%) 10 of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the 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 1/2%).

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of

b. Enviroaire sold goods and services to PNP in taxable year 2007.

To establish that Enviroaire sold goods and services to PNP, the prosecution presented the following pieces of evidence:

1. Fourteen (14) sales invoices issued in 2007:

Exhibit	Reference	Invoice No.	Amount
P-10	Docket, Vol. I, p. 586	ER-07-012	P149,900,000.00
P-11	Docket, Vol. I, p. 587	ER-07-013	P 1,365,920.00
P-12	Docket, Vol. I, p. 588	ER-07-014	1,120,000.00
P-13	Docket, Vol. I, p. 589	ER-07-015	2,219,200.00
P-14	Docket, Vol. I, p. 590	ER-07-016	1,957,280.00
P-15	Docket, Vol. I, p. 591	ER-07-017	2,685,600.00
P-16	Docket, Vol. I, p. 592	ER-07-018	1,822,400.00
P-17	Docket, Vol. I, p. 593	ER-07-019	18,195,520.00
P-18	Docket, Vol. I, p. 594	ER-07-020	24,414,720.00
P-19	Docket, Vol. I, p. 595	ER-07-021	4,557,440.00
P-20	Docket, Vol. I, p. 596	ER-07-022	2,439,640.00
P-21	Docket, Vol. I, p. 597	ER-07-023	1,777,500.00
P-22	Docket, Vol. I, p. 598	ER-07-024	27,179,280.00
P-23	Docket, Vol. I, p. 599	ER-07-025	266,960.00
		Sub-total	P 90,001,460.00
		TOTAL	P239,901,460.00

2. Two (2) Land Bank of the Philippines (LBP) Checks issued by the PNP pay to the order of Enviroaire, Inc.:

Exhibit	Reference	Check No.	Date	Amount
P-24	Docket, Vol. I, p. 600	457825	12/26/2007	P 85,179,953.22
P-25	Docket, Vol. I, p. 602	457991	12/27/2007	140,531,250.01
		TOTAL		P 225,711,203.23

restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" shall likewise include:

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3. Two (2) Official Receipts issued by Enviroaire, Inc.:

Exhibit	Reference	OR No.	Date	Amount
P-24-a	Docket, Vol. I, p. 601	7760	1/17/2008	₱ 85,179,953.22
P-25-a	Docket, Vol. I, p. 603	7761	1/17/2008	140,531,250.01
		TOTAL		₱225,711,203.23

The defense, as summarized in the Judicial Affidavit of the accused, Tyrone N. Ong, is founded on two premises:

1. They did not receive the income payments in 2007;⁹⁷ and,
2. They cannot be held criminally responsible for tax evasion as president and treasurer of the corporation.⁹⁸

First, the Court notes, however, that the accused presented neither evidence nor legal arguments to support the position that Enviroaire is *exempt* from income tax and VAT.

Second, the accused also did *not* dispute that there were, in fact, sales of goods and services by Enviroaire to PNP.⁹⁹ The defense, it should be recalled, adopted as its evidence¹⁰⁰ the following exhibits:

1. Exhibit "P-10", Enviroaire Invoice documenting the ₱149,900,000 sale of goods and services to PNP;¹⁰¹ and,
2. Exhibit "P-25-a", Enviroaire VAT Official Receipt documenting the payment of ₱140,531,250.01,¹⁰² *which ties up with* Exhibit "P-25", LBP Check No. 0000457991 for the amount of ₱140,531,250.01 drawn from the account of Philippine National Police and paid to the order of Enviroaire,¹⁰³ the corporation indicted in this case. *Je*

⁹⁷ Nos. 7, 11 and 12, Offer of Testimony, Judicial Affidavit of Tyrone N. Ong, Exhibit "A-1", Docket, Vol. V, pp. 2703-2704.

⁹⁸ Nos. 1, 2 and 3, Offer of Testimony, Judicial Affidavit of Tyrone N. Ong, Exhibit "A-1", Docket, Vol. V, p. 2703.

⁹⁹ Q&A3-Q&A6 and Q&A8-Q&A9, Judicial Affidavit of Tyrone N. Ong, Docket, Vol. V, pp. 2705-2706.

¹⁰⁰ April 22, 2019 Order, Docket, Vol. V, pp. 2752-2753.

¹⁰¹ Docket, Vol. I, p. 586.

¹⁰² Docket, Vol. I, p. 603.

¹⁰³ Docket, Vol. I, p. 602.

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Furthermore, the defense was also silent and failed to refute the legal basis of the BIR's position that the PNP payments are indeed subject to income tax and VAT.

The Court concludes, therefore, that this element, which is uncontested by the accused, has been established beyond reasonable doubt by the prosecution.

2ND ELEMENT: An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof

a. Under the accrual method of accounting, Enviroaire is obliged to declare and pay income tax due on the sales in taxable year 2007.

Under the accrual basis, companies record transactions that change a company's financial statements in the periods in which the events occur. For example, using the accrual basis to determine net income means companies recognize revenues *when earned (rather than when they receive cash)*. It also means recognizing expenses when incurred (rather than when paid).¹⁰⁴

The accrual method relies upon the taxpayer's *right to receive* amounts or its obligation to pay them, in opposition to *actual receipt* or payment, which characterizes the cash method of accounting. *Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability.* Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.¹⁰⁵

An alternative to the accrual basis is the cash basis. Under the cash-basis accounting, companies record revenue when they receive cash. They record expense when they pay out cash. The cash basis seems appealing due to its simplicity, but it often produces misleading financial statements. It fails to record revenue that a company has earned but for which it has not received the cash. Also, it does not match expenses with earned revenues. Cash-basis accounting is *not* in

¹⁰⁴ Weygandt, Kimmel and Kieso, Accounting Principles, 2010, p. 97.

¹⁰⁵ Mertens Law of Fed Income Tax §12A.57.

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accordance with the generally accepted accounting principles (GAAP).¹⁰⁶

The revenue recognition principle dictates that companies recognize revenue in the accounting period in which it is *earned*. In a service enterprise, revenue is considered to be earned at the time the service is performed.¹⁰⁷

In *Commissioner of Internal Revenue v. Isabel Cultural Corporation*,¹⁰⁸ the Supreme Court explained the accrual method of accounting, as opposed to the cash method:

"Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions....

Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year.

The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.

For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is

¹⁰⁶ Weygandt, Kimmel and Kieso, Accounting Principles, 2010, p. 97.

¹⁰⁷ *Id.*

¹⁰⁸ G.R. No. 172231, February 12, 2007.

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not as much as unknowable, within the taxable year. The amount of liability does not have to be determined exactly; it must be determined with 'reasonable accuracy.' Accordingly, the term 'reasonable accuracy' implies something less than an exact or completely accurate amount." (*Underscoring supplied*)

In the case at bench, evidence points to the fact that Enviroaire adheres to the accrual method of accounting:

First, an examination of the Enviroaire's Audited Financial Statements for the year 2008 and 2007 shows that they report receivables, prepayments, payables and accrued expenses:¹⁰⁹

BALANCE SHEETS		
	2008	2007
ASSETS		
Current Assets		
Cash (Note 3)	₱ 6,863,266.85	₱ 986,721.69
Receivables		25,069,812.89
Inventory		531,300.50
Prepayments and other current assets	192,326.74	286,397.55
Total Current Assets	7,055,593.59	26,874,232.63
Noncurrent Assets		
Property & Equipment-net (Note 3 & 6)	796,488.50	200,325.48
TOTAL ASSETS	₱ 7,852,082.09	₱ 27,074,558.11
LIABILITIES AND SHAREHOLDERS' EQUITY		
LIABILITIES		
Accounts Payable and accrued expenses (Note 7)	₱ 11,828.58	₱ 19,774,986.59
SHAREHOLDERS' EQUITY	7,840,253.52	7,299,571.52
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	₱ 7,852,082.10	₱ 27,074,558.11

Under the Conceptual Framework for Financial Reporting, accrual accounting captures "the effects of transactions and other events when they occur (and *not* as cash or its equivalent is received or paid) and they are recorded in the accounting records and reported in the financial statements of the periods to which they relate."¹¹⁰

For this reason, an entity recognizes¹¹¹ receivables for sales made or services rendered *even without* payments received for the 

¹⁰⁹ Exhibit P-8, Docket, Vol. I, p. 576.

¹¹⁰ Philippine Financial Reporting Standards as at December 31, 2006, Part I of II, p. 12-13.

¹¹¹ Recognition is 'the process of capturing, for inclusion in the statement of financial position or the statement(s) of financial performance, an item that meets the definition of an asset, a liability, equity, income

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period as well as payables and accrued expenses for purchases made *without* payments made. The presence of these accounts clearly reveals that Enviroaire uses the accrual basis of accounting.

Second, Enviroaire's disclosure in Note 2 of its Audited Financial Statements states that the company adopted the Philippine Accounting Standards (PAS) 1:¹¹²

"2. BASIS OF PREPARATION AND PRESENTATION OF FINANCIAL STATEMENTS

XXX XXX XXX

Revised Accounting Standards Effective in 2005

The revised accounting standards that the Company adopted are as follows:

PAS 1 – Presentation of Financial Statements

This provides a framework within which an entity assesses how to present fairly the effects of transactions and other events. It provides the base criteria for classifying liabilities as current or non-current, prohibits the presentation of income from operating activities and extraordinary items as separate line items in statement of income, and specifies the disclosures about the judgements made by management in applying accounting policies, the key sources of estimation uncertainty at the balance sheet date that have significant risks.

XXX

XXX

XXX"

The PAS 1¹¹³ in turn provides, among others:

"Accrual basis of accounting

25 An entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting. *ge*

or expenses', Applying IFRS, IASB Issues Revised Conceptual Framework for Financial Reporting, p. 6, last accessed August 6, 2019 and downloaded from: [https://www.ey.com/Publication/vwLUAssets/ey-applying-conceptual-framework-april2018/\\$FILE/ey-applying-conceptual-framework-april2018.pdf](https://www.ey.com/Publication/vwLUAssets/ey-applying-conceptual-framework-april2018/$FILE/ey-applying-conceptual-framework-april2018.pdf)

¹¹² Exhibit P-8, Docket, Vol. I, p. 580.

¹¹³ Philippine Financial Reporting Standards as at December 31, 2006, Part I of II, p. 391.

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- 26 When the accrual basis of accounting is used, items are recognized as assets, liabilities, equity, income and expenses (the elements of financial statements) when they satisfy the definitions and recognition criteria for those elements in the *Framework*." (*Underscoring supplied*)

The guidelines for the recognition of income under the same Conceptual Framework for Financial Reporting provide:

"Recognition of income

- 92 Income is recognized in the income statement when increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably. This means, in effect, that recognition of income occurs simultaneously with the recognition of increases in assets or decreases in liabilities (for example, the net increase in assets arising on a sale of goods or services or the decrease in liabilities arising from the waiver of a debt payable).
- 93 The procedures normally adopted in practice for recognizing income, for example, the requirement that revenue should be earned, are applications of the recognition criteria in this *Framework*. Such procedures are generally directed at restricting the recognition as income to those items that can be measured reliably and have a sufficient degree of certainty."¹¹⁴ (*Underscoring supplied*)

Furthermore, under PAS 18 – Revenue:

"Sale of goods

- 14 Revenue from the sale of goods shall be recognised when all the following conditions have been satisfied:
- (a) the entity has transferred to the buyer the significant risks and rewards of ownership of the goods;
 - (b) the entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
 - (c) the amount of revenue can be measured reliably;
 - (d) it is probable that the economic benefits associated with the transaction will flow to the entity; and
 - (e) the costs incurred or to be incurred in respect of the transaction can be measured reliably. *Je*

¹¹⁴ Philippine Financial Reporting Standards as at December 31, 2006, Part I of II, p. 25-26.

Rendering of services

20. When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction shall be recognized by reference to the stage of completion of the transaction at the balance sheet date. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:
- (a) the amount of revenue can be measured reliably;
 - (b) it is probable that the economic benefits associated with the transaction will flow to the entity;
 - (c) the stage of completion of the transaction at the balance sheet date can be measured reliably; and
 - (d) the costs incurred for the transaction and costs to complete the transaction can be measured reliably.”¹¹⁵

In essence, the foregoing PFRS and PAS criteria for income recognition are congruent to the Supreme Court’s all-events test in the *Isabela Cultural case*.¹¹⁶

Third, for taxation purposes, Enviroaire used the same accrual method of accounting based on a comparison of the ITR submitted to the BIR and the Audited Financial Statements. The Court finds that the amounts declared in the Audited Financial Statements are identical to those in the ITR:

	Per ITR		Per Audited FS	
	2008 ¹¹⁷	2007 ¹¹⁸	2008 ¹¹⁹	2007 ¹²⁰
Income / Sales / Revenues	₱12,611,752.93	₱27,585,555.35	₱12,611,752.93	₱27,585,555.35
Cost of Income / Sales	7,998,555.03	20,356,397.24	7,998,555.03	20,356,397.24
Gross Income	4,613,197.90	7,229,158.11	4,613,197.90	7,229,158.11
Net Income Before Income Tax	1,423,056.59	2,521,070.25	1,423,056.59	2,521,070.25
Provision for Income Tax / Income Tax	498,069.81	882,374.59	498,069.81	882,374.59

It should be noted that the goods were delivered and the services were rendered in 2007, as invoiced by Enviroaire and inspected by the 

¹¹⁵ Philippine Financial Reporting Standards as at December 31, 2006, Part I of II, pp. 643-644.
¹¹⁶ G.R. No. 172231, February 12, 2007.
¹¹⁷ Exhibit “P-2”, Docket, Vol I, p. 546.
¹¹⁸ Exhibit “P-6”, Docket, Vol I, p. 570.
¹¹⁹ Exhibit “P-8”, Docket, Vol I, p. 577.
¹²⁰ *Id.*

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PNP based on the December 27, 2007 stamp on the invoices.¹²¹ Accordingly, in 2007, the value of the transactions have been reliably measured; the significant risks and rewards of ownership over the goods have been transferred; Enviroaire has fixed its right to the economic benefit from the same transactions; and, correspondingly, the PNP has incurred an obligation to pay. Accordingly, all the income recognition criteria under the accrual method were satisfied in 2007. Therefore, the income from the sales to PNP were earned and should have been recognized as taxable income in 2007.

From the foregoing analysis, it is clear that, for both financial reporting and taxation purposes, Enviroaire is obliged to declare and pay the income tax due on the sales in taxable year 2007.

b. Enviroaire failed to declare and pay the income tax due on the sales in taxable year 2007.

As discussed earlier, the Court finds that the accused's Income from Sales and Services reported in its Audited Financial Statements for the year 2007¹²² matched the Sales/Revenues/Receipts declared in its Annual ITR for the same period in the amount of ₱27,585,555.35.¹²³

On the face of these documentary evidence, the declared amount clearly *failed* to include the sales to the PNP amounting to ₱214,197,732.14 as evidenced by the invoices, checks and official receipts, thus:

			Total
Total price	₱ 133,839,285.71	₱ 80,358,446.43	₱214,197,732.14
Add: 12% VAT	16,060,714.29	9,643,013.57	25,703,727.86
Total invoice amount	₱149,900,000.00¹²⁴	₱90,001,460.00¹²⁵	₱239,901,460.00
Less: 2% & 1% CWT	2,676,785.71	803,584.46	3,480,370.17
5% VAT Withheld	6,691,964.28	4,017,922.32	10,709,886.60
Amount paid	₱140,531,250.01¹²⁶	₱85,179,953.22¹²⁷	₱225,711,203.23

¹²¹ Exhibits P-10 to P-23, Docket, Vol I, pp. 586-599.

¹²² Statement of Income, Exhibit P-8, Docket, Vol. I, p. 577.

¹²³ Line 15, Exhibit P-6, Docket, Vol. I, pp. 570-571.

¹²⁴ Exhibit P-10, Docket, Vol I, p. 586.

¹²⁵ Exhibits P-11 to P-23, Docket, Vol I, pp. 587-599.

¹²⁶ Exhibits P-25 and P-25-a, Docket, Vol I, pp. 602-603.

¹²⁷ Exhibits P-24 and P-24-a., Docket, Vol I, pp. 600-601.

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Contrary to the theory of the defense, the income from the PNP sales were earned in 2007 and should have been recognized as taxable income in 2007.

It is evident, from the comparison with the ₱12,611,752.93 (2008) / ₱27,585,555.35 (2007) sales declared per ITR and Audited FS, that the ₱214,197,732.14 sales to PNP were *never* declared by Enviroaire. Other than insisting that no tax was due *in 2007*, the accused did not present any evidence at all to prove that there was even a subsequent payment of the taxes due to the government from these sales, *even past 2007*.

3RD ELEMENT: Such attempt to evade or defeat tax or the payment thereof is willful

First, Enviroaire asserts that it was not necessary to declare the sales amounting to ₱214,197,732.14 in the 2007 ITR because it was only in the year 2008 that the checks were received and encashed, as evidenced by the official receipts issued.¹²⁸ With this line of argument, the accused attempts to mislead the Court in believing that it follows the cash method of accounting. As previously discussed, the prosecution's evidence proved otherwise.

Second, even if the Court were to accept that, for the sake of argument, Enviroaire used the cash method, the receipts of cash should nonetheless have been reported in 2008 when the payments were received and official receipts were issued. However, an examination of the accused's 2008 ITR *again* showed Sales/Revenues/Receipts of *only* ₱12,611,752.93.¹²⁹ Likewise, Income from Sales and Services reported in its 2008 Audited Financial Statements¹³⁰ *matched* the Sales/Revenues/Receipts declared in its Annual ITR for the same taxable period showing *only* the amount of ₱12,611,752.93.¹³¹ Clearly, the taxable sales and income were not declared in 2008 either.

Third, under Section 248(B) of the NIRC, as amended, there was *substantial* underdeclaration of accused's sales, receipts or income for the years 2007 and 2008: *gr*

¹²⁸ Memorandum, Docket, Vol. V, pp. 2826-2829.

¹²⁹ Line 17, Exhibit P-2, Docket Vol. I, pp. 545-548.

¹³⁰ Statement of Income, Exhibit P-8, Docket, Vol. I, p. 577.

¹³¹ 2008 ITR, Exhibit "P-2", Docket, Vol. I, p. 546.

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“(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of taxable sales, receipts or income or for overstatement of deductions, as mentioned herein.” (*Underscoring supplied*)

In the instant case, undeclared taxable sales of ₱214,197,732.14 is significantly higher than 30% at 776.4851% (2007) and at 1,698.3978% (2008) of the declared taxable sales per ITR of ₱27,585,555.35 (2007)¹³² and ₱12,611,752.93 (2008)¹³³:

$$\begin{array}{rcl} 776.4851\% & & \text{₱214,197,732.14} \\ (2007) = & & \text{₱27,585,555.35} \end{array}$$

$$\begin{array}{rcl} 1,698.3978\% & & \text{₱214,197,732.14} \\ (2008) = & & \text{₱12,611,752.93} \end{array}$$

Although *mere* understatement of tax does not itself prove fraud,¹³⁴ under Section 248(B), *substantial* underdeclaration shall constitute *prima facie* evidence of a false or fraudulent return. Enviroaire’s failure to report its sales, receipts or income in an amount far beyond the 30% threshold, *which remained unrebutted*, renders it liable for substantial underdeclaration of taxable sales, receipts or income. This substantial underdeclaration constitute *prima facie* evidence of a false or fraudulent return.

Fourth, in Yutivo Sons Hardware Company v. Court of Tax Appeals, et al.,¹³⁵ the Supreme Court *En Banc* held that “tax evasion” is a term that connotes fraud through the use of pretenses and 

¹³² Exhibit “P-6”, Docket, Vol. I, p. 570.

¹³³ Exhibit “P-2”, Docket, Vol. I, p. 546.

¹³⁴ *Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue*, G.R. No. L-13203, January 28, 1961.

¹³⁵ G.R. No. L-13203, January 28, 1961.

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forbidden devices to lessen or defeat taxes. "Fraud encompasses a wide range of conduct that conceals the true facts of a situation or creates a false impression upon which the actor seeks a victim to rely to the victim's harm. The two broad forms of fraud are the knowing misrepresentation of facts and the intentional concealment of a material fact in order to create a false impression."¹³⁶

Fraud, therefore, under the context of tax evasion encompasses material misstatements or omissions of material fact which is intended to conceal the true income of a taxpayer. Furthermore, fraud as a state of mind, need *not* be proved by direct evidence but may be inferred from the circumstances attendant in each case.¹³⁷

Materiality refers to the magnitude of an omission or misstatement of accounting data that misleads financial statement readers.¹³⁸ "An information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements. Materiality depends on the size of the item or error judged in the particular circumstances of its omission or misstatement."¹³⁹ Furthermore, an item considered material for financial statement purposes is also considered material for tax purposes.¹⁴⁰

In this case, Enviroaire's ITRs for two consecutive taxable periods have unfailingly shown material or *substantial* underdeclarations exceeding 30%. Enviroaire's omissions to declare the transactions of such scale in 2007 and 2008 certainly mislead third parties who rely on the ITR and the Audited Financial Statements. This pattern of failing to report material facts demonstrates a conduct meant to conceal Enviroaire's taxable income to the prejudice of the government. It is intentional concealment of the Enviroaire's taxable income in order to create a false impression of tax compliance.

When sales of ₱214,197,732.14, which were perfected and consummated and should have been declared in 2007, consistently remain unreported for two consecutive taxable periods resulting in the substantial underdeclaration of more than 30% of sales or income, there is undoubtedly a *willful* attempt to evade or defeat tax imposed or the payment thereof, contemplated in Section 254 in relation to Section 253 and 256 of the NIRC, as amended. 

¹³⁶ Bouvier Law Dictionary, Compact Edition (2011), p. 444.

¹³⁷ *Liberty Insurance Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 104405, May 13, 1993.

¹³⁸ Barron's Dictionary of Accounting Terms, Fourth Edition (2005), p. 290.

¹³⁹ Philippine Financial Reporting Standards as at December 31, 2006, Part I of II, p. 14.

¹⁴⁰ Mertens Law of Fed Income Tax §12A.100.

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4TH ELEMENT: In the case of corporations, the penalty shall be imposed on the president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation

The law is clear. The criminal liabilities of the president and the treasurer of a corporation are plainly delineated in Section 253(d). It states that the president and the treasurer who are *responsible* for the corporate tax evasion under Section 254 shall suffer the penalty imposed.

First, the accused Tyrone N. Ong and Arlene Chua do not deny that they hold the positions as Enviroaire's President and Treasurer, respectively. They wish to impress upon the Court, however, that notwithstanding the high-level positions they assumed, they cannot be held responsible for the acts derived from the exercise of functions which are reasonably expected of said positions.

Accused Tyrone N. Ong attempts to sidestep the responsibilities of their corporate positions by stating that his involvement on the financial and tax reporting is *minimal* and, in the case of the accused Arlene Chua, *absent*. In effect, they disavow knowledge or feign ignorance of the tax obligations of the corporations declared under oath in the Audited Financial statements and the ITRs:¹⁴¹

"37. Q: Mr. Witness, have you ever examined thoroughly a tax return in your life?

A: I have seen a tax return but to be honest, I have never examined a tax return line by line.

38. Q: Would you if Enviroaire filed its ITR for taxable year 2007?

A: I am sure Enviroaire filed its ITR for taxable year 2007.

39. Q: Are you familiar with the contents of the income tax return for 2007?

A: No. I am not familiar with the contents. 

¹⁴¹ Exhibit "A-1", Judicial Affidavit of Tyrone N. Ong, Docket, Vol. V, pp. 2710-2711.

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40. Q: Why? Aren't you supposed to look into this matter as President?

A: No. I am President but as I said I am actually the PR Officer of the company. I am tasked with the heavy responsibility of finding clients, delivering what the client needs building a relationship with them to generate revenue.

On the other hand, the Finance matters are handled by someone else.

41. Q: Mr. Witness, who takes care of the financial aspect of the business?

A: Since Enviroaire is a special project company, we don't have a full-time finance officer. What we do is we ask the assistance of a Finance Officer from another company.

42. Q: Do you know the Finance Officer personally?

A: Yes.

43. Q: Do you work with her on finance matters?

A: No, I do not.

44. Q: Do you supervise what the Finance Officer does in Enviroaire?

A: No because the Finance Officer pretty much worked on Enviroaire matters independent of anyone.

45. Q: Does your wife supervise the Finance Officer?

A: My wife has zero involvement in the company."

The Court is not convinced by this self-serving, almost blanket denial of responsibility.

The term "responsibility" used in Section 253(d) denotes the accountability of a person for ensuring that some action occurs or some condition is satisfied. It is synonymous to legal liability because one is liable for acts or omissions for which one is responsible.¹⁴² Under the responsible corporate officer doctrine, one who acts for a business is responsible for such acts. The responsible corporate officer doctrine creates administrative and criminal liability for each person within a business entity whose decision in making a policy or executing an act *je*

¹⁴² Bouvier Law Dictionary, Compact Edition 2011, p. 961.

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as an officer of the corporation causes the business entity to violate the law.¹⁴³

Second, this evasion of responsibility not only *circumvents* the obligations attached to the top corporate positions they occupied but is even *belied* by their undertaking in the Statement of Management Responsibility¹⁴⁴ which both the accused signed off¹⁴⁵ and which expressly state:

"The Management of ENVIORAIRE, INC. is responsible for all information and representations contained in the Company's financial statements as of December 31, 2008 and 2007. The financial statements have been prepared in conformity with the generally accept accounting principles and reflect the amounts that are based on the best estimates and informed judgement of management with appropriate consideration to materiality.

In this regard, management maintains a system of accounting reporting which provides for the necessary internal controls to ensure transactions are properly authorized and recorded, assets are safeguarded against unauthorized use or disposition and liabilities are recognized." (*Underscoring supplied*)

As a matter of record and consistent with his stewardship as President of the company, accused Tyrone N. Ong himself admitted that he is responsible for "closing deals",¹⁴⁶ managing clients and focusing on "how to generate revenues".¹⁴⁷ He even testified on the nature and details of the transactions with PNP:

"8. Q: You mentioned that the company refurbishes Light Armored Vehicles, what do you mean by refurbish? And who are the parties involved?

A: To refurbish means we reconditioned and rehabilitated the old Light Armored Vehicles or tanks of the PNP. Basically, we serviced the Light Armored Vehicles and reconditioned these to make them operational. This service includes supply of parts."

The idea of a president, the highest official of the company, who closes transactions, ones dealing with millions of pesos, and who is *je*

¹⁴³ Bouvier Law Dictionary, Compact Edition 2011, p. 757.

¹⁴⁴ Exhibit "P-8", Audited Financial Statements, Docket, Vol. I, p. 574.

¹⁴⁵ Exhibits "P-8-a" and "P-8-b", Audited Financial Statements, Docket, Vol. I, p. 574.

¹⁴⁶ Q&A4 and Q&A5, Judicial Affidavit of Tyrone N. Ong, Docket, Exhibit "A-1", Vol. V, p. 2705.

¹⁴⁷ Q&A7, Judicial Affidavit of Tyrone N. Ong, Docket, Vol. V, pp. 2705-2706.

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entrusted with safeguarding that these revenue streams are recorded properly *directly contradicts* the cloak of ignorance worn by the accused to shirk from his financial oversight functions.

Third, the financial oversight functions of the president and the treasurer are even more significant when evaluated in the context of materiality. The sales involved, which the accused do not bother to deny, were valued at ₱214,197,732.14. Compared to the financials of the company, this amount *eclipses* the declared *total* assets and the income of the entire company considerably:

		Factor	Undeclared PNP Sales
2007 Sales per ITR and FS	₱27,585,555.35	776%	₱214,197,732.14
2007 Total Assets per FS	27,074,558.11	791%	214,197,732.14
2008 Sales per ITR and FS	12,611,752.93	1,698%	214,197,732.14
2008 Total Assets per FS	7,852,082.09	2,728%	214,197,732.14

Materiality refers to the magnitude of an omission or misstatement of accounting data that misleads financial statement readers.¹⁴⁸ Because of the materiality of the undeclared sales, by the general principle of estoppel, the accused are prevented from denying their acts, representations or admissions that will prejudice others who rightfully rely on such representations. More specifically, by conveniently delegating the responsibility of tax compliance to the Finance Officer, accused cannot escape the application of “willful blindness” doctrine. This doctrine is defined as “deliberate avoidance of knowledge of a crime, especially by failing to make a reasonable inquiry about a suspected wrongdoing despite being aware that it is highly probable.”¹⁴⁹

On this score, *Benjamin G. Kintanar v. People of the Philippines*¹⁵⁰ is instructive where the CTA *En Banc* held:

“The Court considers petitioner-accused's complete reliance on his supposed accountant to file his required ITRs, as a willful act to delegate the performance of his legal duty to said accountant, tantamount to ‘deliberate ignorance’ or ‘conscious avoidance’ on his part to ensure the filing of his required income tax returns. Consequently, as said accountant clearly failed to perform her supposed duties, petitioner-accused must bear the legal consequences arising from such omission. *gr*

¹⁴⁸ Barron’s Dictionary of Accounting Terms, Fourth Edition (2005), p. 290.
¹⁴⁹ *People of the Philippines v. Benjamin Kintanar*, CTA Crim. Case Nos. O-031 & O-032, Resolution dated February 23, 2011 affirmed in CTA EB Crim. Case No. 012, May 7, 2012.
¹⁵⁰ CTA EB Crim. Case No. 012, May 7, 2012.

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Moreover, petitioner-accused's admission that he merely signed without reading all the contents of the subject ITRs further manifests his evident lack of concern and interest, definitely a voluntary act and an intentional disregard of his tax responsibilities to the government. Worst, as earlier pointed out, petitioner-accused presented materially flawed ITRs purporting to be received by a revenue district of which he is not a resident." (*Underscoring supplied*)

Moreover, in the consolidated cases of *Rogelio A. Tan v. People of the Philippines*,¹⁵¹ the Court *En Banc* also discussed the nature of the president's responsibility as part of management and the Section 253(d) liability that the person assumes with that position in the filing of the ITRs:

"Accused admits that he was not only the president but also the general manager of Jadewell in the years 2003 and 2004 when it was still in operation. As such, he was charged with the management of the company, set policies for the achievement of its goal and provided directions for the business to ensure its viability and financial growth. This admission highlighted the fact that as the chief executive, he was the one on top of the operation overseeing if not directly controlling its daily business concerns. It is therefore incredible that he was not aware of the filing of the subject fallacious ITRs of Jadewell. Note that the filing of ITR is a significant incident of any business operation and one that does not merely involve filing of documents with the BIR but also shelling out some amounts which if indecent could possibly deplete corporate resources or even cause a closeshop. Precisely it places top management of any business enterprise in animation during the tax period. As earlier stated, accused was not only the president but also the general manager of Jadewell, hence, the possibility of not knowing the filing of the fallacious ITRs is nil.

Accused cannot also take refuge on the contention that subject ITRs did not bear his signature or were unsigned or with just the typewritten name of Via Aguas, who according to him, was not an employee of Jadewell. For one, his signature need not appear on the subject ITRs for it could be filed for and in behalf of Jadewell as obtaining in the case at bar.

Also incredulous is accused' claim that Via Aguas was not at all connected with Jadewell even if her typewritten name appears on Jadewell's ITR for taxable year 2004. Aside from his self-serving allegation, accused failed to present any evidence to bolster this defense which is strongly negated by the fact that Via Aguas as the company's bookkeeper signed several payment forms pertinent to the Jadewell's tax liability. Amazingly, accused, who was in control

¹⁵¹ CTA EB Crim. Cases Nos. 022 and 023, November 18, 2014.

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of the management of Jadewell, could not even explain how such incident occurred under his stewardship.

Likewise *sans* support in law and jurisprudence is accused' defense that the 'willful blindness' rule applies only to violation of Section 255 involving non-filing of tax returns or non-payment of the corresponding taxes and not for failure to supply correct and accurate information in the returns. Per accused, 'want of knowledge of obligation' or 'good faith' cannot be presumed.

However, none of the cases cited by accused categorically states that the 'willful blindness' doctrine applies only to cases involving non-filing of return or non-payment of corresponding taxes. Willful blindness, as defined by Black's Law Dictionary, is the 'deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable.' As correctly observed by the Court in Division, there was 'willful blindness' on the part of accused. As president and general manager of Jadewell, he should, at the very least, know who was authorized to sign the ITR and other tax filings for his company, but nay.

Accused also insists that Via Aguas was not an employee of Jadewell or one authorized to sign and file its ITR and other tax filings. Nothing shows the fallacy of this contention more sharply than accused' presentation and submission as his own evidence in chief the very same unsigned ITR or one with merely typewritten name of Via Aguas filed by Jadewell for taxable years 2003 and 2004.

xxx

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In his last-ditch attempt to exonerate himself from criminal liability, accused claims that the act of Via Aguas of signing several payment forms in settlement of Jadewell's tax liabilities should not prejudice him in the absence of any evidence that conspiracy exists between them. Moreover, his being the President and General Manager of Jadewell during the relevant period per se is not sufficient to justify his conviction for the crimes charged.

But the law is clear. Section 253 (d) of the NIRC of 1997 specifically imputes the criminal liability for the violation of the law by the association, partnership or corporation upon ***'the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation'***. Accused admits that he was the president and general manager or the responsible officer of Jadewell while it was still in operation in 2003 and 2004. Interestingly, his name was typewritten on Jadewell's ITR for taxable year 2003, this for sure contradicts his claimed ignorance regarding the preparation and filing of such ITR." (*Underscoring supplied and citations omitted*) *Je*

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Finally, good faith, as a question of intention, is determined by outward acts and proven conduct.¹⁵² Good faith also requires that the accused officers in this case exhibit acts or conduct that demonstrate "an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage"¹⁵³ and "honesty of intention, and freedom from knowledge of circumstances" which ought to put them upon inquiry.¹⁵⁴

When viewed in the light of the surrounding facts, the testimony of the accused Tyrone N. Ong about how they conducted and exercised their official duties strongly suggests a lack of good faith. Without even denying the taxability of the transaction, the accused merely *exploited* an accounting technicality to insist that no tax was due in 2007. But, in their attempt to justify their omission, they failed to present any evidence to prove that there was at least a subsequent payment of the tax lawfully due, *as a sign of good faith*.

All told, the prosecution's evidence consisting of various source documents (Enviroaire invoices and official receipts), ITRs and Audited Financial Statements obtained from reliable third parties such as the BIR, COA, SEC, and the Ombudsman; the nature and functions of the positions held by the accused as President and as Treasurer; the materiality of the transaction consistently undeclared for two consecutive years; their statement of management responsibility which they *signed under oath*; and, the absence of good faith have established their responsibility *beyond reasonable doubt* in Enviroaire's violation under Section 254 in relation to Section 253 and 256 of the NIRC, as amended.

Civil Aspect of the Case

a. The civil aspect of the case is impliedly instituted in the criminal case.

With regard to the civil aspect of this case, the same is deemed simultaneously instituted pursuant to Section 7(b)(1) of Republic Act No. 1125, as amended, which provides that:

"xxx. Any provision of law or the Rules of Court to the contrary notwithstanding, criminal action and the corresponding civil action *je*

¹⁵² *Jerome K. Solco v. Megaworld Corporation*, G.R. No. 213669, March 5, 2018.

¹⁵³ *The Heirs of Victorino Sarili v. Pedro F. Lagrosa*, G.R. No. 193517, January 15, 2014.

¹⁵⁴ *Id.*

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for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

b. The assessment is void for failure to prove receipt of PAN and FAN/FLD.

Section 228 of the NIRC, as amended, describes the procedure in tax assessments, as follows:

"SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Underscoring supplied*) 

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Implementing this provision are Sections 3.1.2 and 3.1.4 of Revenue Regulation No. 12-99:¹⁵⁵

"3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

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3.1.4 *Formal Letter of Demand and Assessment Notice*. —The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* xxx. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

The law requires that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.¹⁵⁶

An assessment contains *not only* a computation of tax liabilities, *but also* a demand for payment within a prescribed period. It also *re*

¹⁵⁵ "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", September 6, 1999.

¹⁵⁶ *Commissioner of Internal Revenue v. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

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signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.¹⁵⁷

When asked concerning the receipt of the PAN and FAN/FLD, Accused Tyrone N. Ong denied the receipt of any assessment notices:

"14. Q: Did you receive any other notice concerning this from any other government agency?

A: No.

XXX

XXX

XXX

19. Q: So Mr. Witness, you mentioned that there was not communication from the BIR. You mean to say that you also did not receive the Final Assessment Notice?

A: Never."¹⁵⁸

The Supreme Court held in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,¹⁵⁹ that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, *viz.*:

"Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals*, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965: 

¹⁵⁷ *Lucas G. Adamson, et al. v. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

¹⁵⁸ Exhibit "A-1", Docket, Vol V, p. 2707.

¹⁵⁹ G.R. No. 157064, August 7, 2006.

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'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).'"
(Emphases supplied)

To prove that the accused was duly informed of its tax deficiency, the prosecution presented the PAN¹⁶⁰ and FAN/FLD.¹⁶¹

However, the Court finds that no prosecution witnesses testified as to the fact of mailing of the PAN and FAN/FLD. The issue could have been settled by RO Omaña's Judicial Affidavit¹⁶² but the testimony merely stated that the PAN was issued on June 28, 2016 while the FAN/FLD was issued on July 26, 2016 and that both were served by registered mail to Enviroaire, Inc.'s registered addresses, thus:

"Q43. After filing the case, what did you do with the case docket?

A: The case docket was forwarded to the Assessment Division for the preparation of the Preliminary Assessment Notice and Final Assessment Notice with Formal Letter of Demand for the collection of deficiency internal revenue taxes of Enviroaire, Inc.

Q44. When was the PAN issued by the BIR?

A: The Preliminary Assessment Notice or PAN for taxable year 2007 was issued on June 28, 2016. It was served by registered mail to Enviroaire, Inc.'s registered addresses: No. 40 Shaw Boulevard, Bagong Silang, Mandaluyong City and 8/F Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City.

The PAN was also mailed to accused's address on record: 1440 J. Abad Santos Street, Tondo, Manila.

Q45. When was the FAN/FLD issued by the BIR?

A: The Final Assessment Notice and Formal Letter of Demand (FAN/FLD) for taxable year 2007 was issued on July 26, 2016. It *gr*

¹⁶⁰ Exhibit "P-26", Docket, Vol I, pp. 604-607.

¹⁶¹ Exhibits "P-27" and "P-28", Docket, Vol II, pp. 1133-1136 and 1137-1138.

¹⁶² Exhibit "P-29", Docket, Vol II, pp. 876-877.

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In the more recent case of *Allied Banking Corporation (now Philippines National Bank) v. Eduardo De Guzman, Sr., et al.*,¹⁶⁴ the Supreme Court held that when a mail matter was sent by registered mail, a party proving the same must present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative, as follows:

On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, viz.:

xxx

XXX *g*

¹⁶⁴ G.R. No. 225199, July 9, 2018.

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The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability."

Unfortunately, the prosecution did not present any evidence to prove that the assessment notices were duly served and received by accused Tyrone N. Ong and Arlene Chua.

"Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence."¹⁶⁵ Accordingly, the absence of any proof by competent evidence of the receipt of the PAN and FAN/FLD by the accused, renders the assessments void.

A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.¹⁶⁶

Indeed, taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure." The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.¹⁶⁷

Finally, Section 205(b) of the NIRC, as amended, provides the requisites for the award of civil liability in criminal case, to wit: *Re*

¹⁶⁵ *Mirasol Castillo v. Republic of the Philippines, et al.*, G.R. No. 214064, February 6, 2017.

¹⁶⁶ See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018.

¹⁶⁷ *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

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"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 xxx

(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: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

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.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon." (*Underscoring supplied*)

In view of the foregoing, without any other evidence presented by the prosecution as proof for the civil aspect of this case, this Court cannot impose any civil liability on the accused in this case.

WHEREFORE, premises considered, the Court rules as follows:

1. Accused **TYRONE N. ONG** and **ARLENE CHUA** are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 253 and 256 of the NIRC, as amended, and are 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 One Hundred Thousand Pesos (P100,000.00), with subsidiary imprisonment, in case accused have no property with which to meet such fine, pursuant to Section 280 of the NIRC, as amended.
2. **ENVIROAIRE INC.** is found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 256 of the NIRC, as amended, and is **ORDERED TO** 

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PAY a fine of One Hundred Thousand Pesos (₱100,000.00);
and,

3. The Preliminary Assessment Notice dated June 28, 2016, and Final Assessment Notice and Formal Letter of Demand for Income Tax and Value Added Tax, all dated July 26, 2016, are hereby declared **VOID**.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO GRULLA
Associate Justice

Jean Marie A. Bacorro-Villena
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

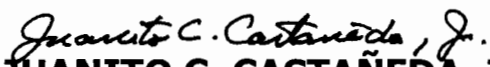
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ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice