

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 157, PASIG CITY
rtc2pas_157@judiciary.gov.ph
Tel. No. 8829-9128

PEOPLE OF THE PHILIPPINES,

- versus -

R-PSG-18-02983-CR

For: Violation of Sec. 255 of the
1997 National Internal Revenue
Code (NIRC)

RAPPLER HOLDINGS
CORPORATION/MARIA A. RESSA,
Accused.

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DECISION

On 14 November 2018, the accused Rappler Holdings Corporation (RHC) and its President Maria A. Ressa were charged with violating Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, under an Information¹ which alleged:

“That on or about July 2015, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, under Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the second (2nd) quarter of tax year 2015, by then and there, failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDR’s), as a dealer in securities, to NBM Rappler, L.P. in the total amount of Two Million Four Hundred Fifty-Two Thousand One Hundred Fifty-Four Pesos and Eighty-Seven Centavos (Php2,452,154.87), thereby resulting in deficiency value-added tax, in the amount of Two Hundred Ninety-Four Thousand Two Hundred Fifty-Eight Pesos and Fifty-Eight Centavos (Php294,258.58), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.”

Upon finding probable cause, the court issued a warrant of arrest against Ms. Ressa on 28 November 2018.² She subsequently posted a cash bond for her provisional liberty in the amount of Php60,000.00 under O.R. No. 6088320 dated 03 December 2018.

Ms. Ressa was arraigned on 22 July 2020 and pleaded “Not Guilty” to the charge.³ Ms. Glenda Gloria also appeared in court as the duly authorized

1 Records Vol. 1, pp. 1-3

2 Id. at 349-350

3 Records Vol. 5, p. 309

representative of RHC and pleaded "Not Guilty" to the charge on behalf of the company. After a pre-trial conference was conducted and concluded on 20 October 2020,⁴ trial on the merits ensued.

The prosecution presented two witnesses, **ED AL RENZI SALLES** (Mr. Salles) and **EDITHA V. QUILANTANG** (Ms. Quilantang). Both witnesses stated that they are certified public accountants and, at the time material to this case, were Revenue Officers assigned at the Bureau of Internal Revenue - National Investigation Division (BIR-NID). They were part of a team that investigated the tax compliance of RHC and are complainants in the Joint Complaint-Affidavit filed against RHC and Ms. Ressa before the Department of Justice (DOJ).

In his *Judicial Affidavit*⁵ that was adopted as his direct testimony, Mr. Salles stated that the investigation into RHC's tax compliance was brought about by a ruling issued by the Securities and Exchange Commission (SEC) on 11 January 2018 in "*In Re: Rappler, Inc. and Rappler Holdings Corporation*" docketed as SP Case No. 08-17-001.⁶ Under the said ruling, the Certificate of Incorporation of Rappler, Inc. (RI) and RHC were revoked upon finding that the two entities violated constitutional foreign equity restrictions in mass media. NID Memorandum Assignment No. CRD/AJDG 2018-01-024-0083 dated 24 January 2018 was thus issued directing Mr. Salles, Ms. Quilantang and Rossana F. Berba (investigating team) to conduct a preliminary investigation against RHC and RI to check their tax compliance.

The investigating team secured documents pertaining to RHC from the BIR and SEC. These included the computer print-out of the tax registration details of RHC, its monthly value-added tax (VAT) declaration for May 2015, as well as quarterly VAT return for the 2nd Quarter of 2015 filed through the BIR Electronic Filing and Payment System (eFPS). They also secured the Certificate of Incorporation, Articles of Incorporation and General Information Sheet (GIS) of RHC as well as its financial statements (FS) for the years 2014 and 2015. They were able to get copies of three (3) SEC Forms 10-1 dated 08 June 2015, 08 August 2015 and 01 December 2015, all filed by RHC and signed by Ms. Ressa as President of the company.

Upon studying, evaluating and analyzing the foregoing documents, the investigating team were able to build information on the company and tax profile of RHC and RI. They established that both companies are domestic corporations sharing a common business address at Capitol Commons, Ortigas Center, Pasig City. Mr. Salles further stated that they were able to map out the connection between RI and RHC based on the documents that they secured. They discovered that RHC owned 98.84% equity in RI, making the latter its subsidiary. RHC and RI also had interlocking directors and identical officers, and were both headed by Ms. Ressa as President. RHC is registered with the BIR Revenue District Office (RDO) No. 43 - Pasig City and indicated its line of industry as financial holding company.

Mr. Salles added that they were able to confirm several transactional activities which indicated that RHC acted as a dealer in securities. RHC supposedly sold securities which gave rise to sales receipts that it failed to

⁴ Records Vol. 7, pp. 542-543

⁵ Records, Vol. 9, pp. 130-151

⁶ Records, Vol. 10, pp. 923-951 (Exh. "A")

declare in its quarterly VAT returns for tax year 2015. These securities consisted of Philippine Depositary Receipts (PDRs) which RHC, through its President Ms. Ressa, sold to two (2) foreign corporations, namely: NBM Rappler, L.P. (NBM) and Omidyar Network Fund LLC (Omidyar). These were the same PDRs covered and discussed in the SEC Decision that found RHC and RI to have violated foreign ownership restrictions by the issuance of PDRs to Omidyar.

According to Mr. Salles, in December 2014, RHC purchased 1,300,000 RI shares, at Php1.00 par value per share, for a total subscription price of Php1,300,000.00 as shown in the 2014 FS of RHC. On 25 May 2015, RHC again purchased 110,917,181 RI common shares for a total subscription price of Php110,917,181, which was reflected in the separate FS of RHC for tax year 2015. By this time, RHC had acquired 48.17% equity in RI, as acknowledged in the 2015 FS of RHC.

Subsequently, on 29 May 2015 and 29 July 2015, RHC issued 264,601 PDRs and 11,764,117 PDRs, respectively, to NBM utilizing a total of 12,028,718 RI shares as underlying shares for a total price of Php111,474,554.10. This is shown in the SEC Forms 10-1 submitted by RHC and signed by Ms. Ressa.

On 28 August 2015, RHC purchased an additional 7,217,257 RI shares with a par value of Php1.00 per share for a total subscription price of Php7,217,257. As a result of this purchase, RHC became 98.84% owner of RI, as reported in the latter's 2015 FS. On 02 October 2015, RHC wrote and issued the same number of PDRs to Omidyar for a total subscription price of Php70,184,204.57.

At this point, the investigating team observed that the PDRs were being issued on a one-for-one basis as against the RI shares. They also took note of the fact that, per Verified Explanation of accused RHC during the SEC investigation, Ms. Ressa was already meeting with NBM and Omidyar regarding funding as early as 29 October 2013 and 26 January 2014. Barely a few months later, accused RHC was formed and made repeated purchases of RI shares followed by the issuance of PDRs to these foreign corporations. These circumstances led the investigating team to conclude that the transactions were in the nature of securities dealing, with RHC allegedly acting as a dealer in securities.

Mr. Salles maintained that the shares of stock issued by RI and the PDRs issued and sold by RHC are securities, as these are defined in Section 3 of the Securities Regulation Code (SRC) and Section 22(U) of the Tax Code. In the SEC Forms 10-1 that RHC filed with the SEC, RHC even acknowledged that the PDRs are securities as it sought exemption under Sec. 10.1 (k) of the SRC which covers sale of securities. The Philippine Stock Exchange (PSE) website also described a PDR as a security.

Meanwhile, RHC conducted itself as a dealer in securities as all the requisites that make one a dealer in securities under Section 22(U) of the Tax Code have allegedly been satisfied. RHC is a corporation with an established place of business that had engaged regularly in the purchase of securities and its resale to customers, for the supposed purpose of obtaining profits from the transactions.

In support of his contention, Mr. Salles noted the immediacy of the sale



by RHC of the PDRs from the time the underlying RI shares were bought. According to him, this shows that RHC was continually buying RI shares for the purpose of immediate re-sale through the PDRs to customers already waiting, as opposed to acquiring and holding them for investment or speculation. Moreover, Mr. Salles claimed that the PDR holders are deemed "customers" by having transacted with RHC.

Mr. Salles also pointed out that, based on the provisions of the PDR instruments themselves, RHC, as the registered legal owner of the RI shares, is stripped of its beneficial ownership by the issuance and sale of PDRs to Omidyar and NBM. The writing of the PDRs and its eventual sale to the PDR holders approximates the re-sale of the same RI shares. Thus, from a tax perspective, the PDRs were allegedly equivalents of the RI shares and the transactions qualify as the buying and re-selling of securities by a dealer, as contemplated under the Tax Code.

Mr. Salles asserted that RHC derived a total gain or income of Php162,412,783.67 from the sale of PDRs to Omidyar and NBM. This amount was arrived at by deducting the aggregate par value of the underlying RI shares pegged at Php19,245,975.00 from the total consideration of Php181,658,758.67 that RHC received from selling the PDRs. According to Mr. Salles, this is classified as ordinary business income as the same was earned from ordinary assets held by RHC in the ordinary course of its business activity as a dealer in securities. Having realized gain from these transactions, RHC was obligated to report this as taxable sales in its VAT returns and pay the corresponding taxes for tax year 2015. However, the sales receipts from the PDR transactions made to NBM in May 2015 in the total amount of Php2,452,154.87 was not reflected in RHC's VAT return for the 2nd quarter of 2015.

Taking into consideration all of the foregoing circumstances, Mr. Salles said that they had reason to believe that the under-reporting or non-declaration of gains allegedly committed by RHC was willful and deliberate, and is thus tantamount to tax fraud. The creation of RHC, its purchase of RI shares and subsequent sale of PDRs was allegedly a premeditated business scheme whose tax consequence RHC could not have been unaware or should have known. RHC took on the role of an intermediary corporation that was allegedly formed in order to acquire the RI shares, originate or write PDRs against them for transfer in derivative form to foreign investors who are disqualified from directly owning RI shares.

The investigating team thus recommended for the issuance by the Commissioner of Internal Revenue (CIR) of a Letter of Authority (LOA) against RHC and RI. A LOA was issued on 02 March 2018 authorizing the investigating team to examine the books of account and accounting records of accused RHC for 2014 and 2015. The investigating team eventually recommended the filing of a criminal complaint before the DOJ against RHC and Ms. Ressa for violation of Sections 254 and 255 of the Tax Code. The CIR subsequently authorized the filing of the criminal charges.

During cross-examination, Mr. Salles admitted that the criminal case at hand is related to four (4) other Informations filed before the Court of Tax Appeals (CTA) against RHC and Ms. Ressa docketed as CTA Case Nos. 0679, 0680, 0681, and 0682. He likewise confirmed that the investigating team was able

to finish the investigation within a period of one (1) month. A LOA was issued on 02 March 2015, but the criminal cases were already filed six (6) days later on 08 March 2015.⁷

Mr. Salles also admitted that the investigating team did not conduct an actual examination of RHC's books of account. He was only in his second month as a BIR Revenue Officer when he filed the criminal cases against RHC and Ms. Ressa. Meanwhile, it was his first time to file a criminal case against an officer of a holding company in relation to the issuance of PDRs.⁸

Mr. Salles was aware that the SEC Decision in SP Case No. 08-17-001 was elevated to the Court of Appeals and that the latter ruled that the issuance of PDRs is not illegal *per se*. Contrary to his statements, RI and RHC also do not share a common business address. Per his recollection, the two companies also did not exactly have the same directors, officers and stockholders.

Mr. Salles likewise confirmed that Note 6 of RHC's 2015 FS clearly disclosed the company's investments in its subsidiary. There is also a disclosure of the PDRs in Note 4.⁹

Upon further query, Mr. Salles testified that they treated the issuance of the PDRs to NBM and Omidyar as a sales transaction, and not an investment activity, based on their evaluation and analysis of the gathered documents as a whole. He insisted that, based on the documents, RHC was only set up to allegedly facilitate the sale of RI shares to the two (2) foreign corporations who are disqualified from owning the shares. According to Mr. Salles, the transaction will not be treated as a sale if the purchaser of the PDRs is a local person or entity. He claimed that if the PDRs are issued to a holder who is qualified to own the shares, then the transaction can be deemed an investment activity.¹⁰

The second prosecution witness, Ms. Quilantang also executed a *Judicial Affidavit*¹¹ that was adopted as her direct testimony. She corroborated the statements made by Mr. Salles on all material points. She reiterated that RHC engaged in transactional buying and re-selling of securities by taking on the position of a dealer that performed the task of buying RI shares, then of writing or originating equity derivatives from the same shares in the form of PDRs. It then subsequently offered the PDRs for sale to Omidyar and NBM who could not buy shares directly from RI due to foreign ownership restrictions under the Constitution.

Ms. Quilantang echoed the position taken by Mr. Salles that the sale of the PDRs approximates the actual re-selling of RI shares and that the PDRs are equivalent of the RI shares from a tax perspective. The one-for-one issuance of the PDRs against the RI shares operated as a transfer of the beneficial interests inherent in the shares in favor of the buyer or holder of the PDRs.

Ms. Quilantang added that RHC was observed not to have had any other

⁷ Transcript of Stenographic Notes (TSN), Ed Al Renzi Salles (February 23, 2021), pp. 35, 41 & 45

⁸ Id. at 46-48

⁹ Id. at 50, 57-59, 62-63 & 65

¹⁰ Id. at 73-81

¹¹ Supra. Note 5 at 368-380

significant business transaction during the relevant period apart from the buying of shares and issuance of PDRs. The acquisition of shares by RHC was done with the intention of immediately reselling the same as against buying or holding them for investment, given the short interval between the purchase of RI shares and the selling of PDRs that followed.

Furthermore, RHC allegedly earned income from the transactions consisting of the difference between the original price of the RI shares and the mark-up on its re-sale to Omidyar and NBM. Thus, the income earned by RHC from the transactions is subject to corporate income tax and value-added tax under the Tax Code. However, RHC did not declare the income and sales receipts from the transactions in its tax returns for 2015. As a result, the accused RHC is liable for deficiency VAT for the 2nd quarter of 2015 in the amount of Php294,258.58, exclusive of surcharge and interest, or Php621,103.61 inclusive of surcharge and interest, on its PDR transactions with NBM.¹²

Together with Mr. Salles, Ms. Quilantang executed a Joint Complaint Affidavit against RHC and Ms. Ressa before the DOJ for violation of Sections 254 and 255 in relation to Section 253 (d) of the Tax Code. A Notice of Informal Conference¹³ was issued and personally served to RHC on 19 November 2018 at its registered business address, and was received by a certain Arnold Gueco who claimed to be RI's receiving staff. After receiving the notice, RHC's counsel requested for a meeting, but no documents were submitted by the said accused.

Thereafter, a Preliminary Assessment Notice (PAN)¹⁴ was issued and personally served on RHC and again received by Mr. Gueco. Its counsel then submitted a reply to PAN on 02 January 2019. As a matter of procedure, a Formal Letter of Demand with Final Assessment Notices¹⁵ (FLD/FAN) were issued and also personally served to RHC and received by Mr. Gueco on 15 April 2019. On 15 May 2019, they received a reply from the counsel of RHC, asking them to cancel the FLD/FAN and to desist from pursuing a separate civil action against the latter.

When cross-examined, Ms. Quilantang confirmed that the investigating team did not conduct an actual audit of the books of account and records of RHC before they initiated the filing of this criminal case. RHC's Verified Explanation,¹⁶ which Ms. Quilantang cited as basis for characterizing the PDR transactions as a sale, also explains that RHC was seeking investments for RI's expansion by the issuance of PDRs. Attached to the Verified Explanation were two (2) PDRs issued only to NBM and Omidyar.¹⁷

Moreover, Ms. Quilantang affirmed that, under the terms of the PDRs, RHC will subscribe to RI shares upon increase of the latter's authorized capital stock. The said shares shall be owned and registered in the name of RHC, while the PDR holder is merely given an exercise right or option. The PDR Certificates attached to the PDR Instrument also state that the PDRs are not shares of stock but confers upon the holder the right to the delivery or sale of RI shares subject

12 Id. at 484-485

13 Supra. Note 6 at 1177-1180 (Exh. "T")

14 Id. at pp. 1181-1185 (Exh. "U")

15 Id. at pp. 1186-1194 (Exh. "W")

16 Id. at pp. 952-998 (Exh. "A-1")

17 TSN, Editha Quilantang (November 23, 2021), pp. 29 & 34-36

to certain conditions.¹⁸

In answer to the court's query, Ms. Quilantang stated that, apart from the transactions with NBM and Omidyar in 2015, RHC did not enter into any other PDR transaction up to the time the BIR conducted its investigation in 2018. Ms. Quilantang also admitted that there were other media companies who engaged in the same kind of transactions but were not subject to investigation by the BIR, as these companies were allegedly listed in the Philippine Stock Exchange (PSE). She did not know why Rappler was investigated and said that the same is discretionary on the part of the Chief of the BIR-NID.¹⁹

Upon conclusion of Ms. Quilantang's testimony, the prosecution filed a Formal Offer of Exhibits²⁰ which the court resolved in the Order dated 21 March 2022.²¹ The prosecution was then deemed to have rested its case.

The presentation of defense evidence commenced with the testimony of accused **MARIA A. RESSA**. She stated in her *Judicial Affidavit*²² that she has been a journalist for more than thirty five (35) years and is also an educator, researcher, author and entrepreneur. She has spent most of her career running news groups for large international and Filipino media organizations. In 2011, she began to create RI whose website went live on 01 January 2012.

Ms. Ressa confirmed that accused RHC is a holding company and owns 98.84% of RI's shares as shown in its 2015 Consolidated Audited Financial Statements.²³ She was one of RHC's incorporators, its President and Chief Executive Officer and a member of its board of directors. As stockholder, she owns 23.77% of the total shareholdings of the company.

According to Ms. Ressa, RHC was formed to legally raise funds for the expansion of RI's operations. As a start-up, RI's focus on tech, journalism and community allegedly succeeded on its first year, and proved to be a viable and sustainable model for news. They thus wanted to compete in a regional and global landscape, and gain recognition for the Rappler brand.

To understand their options for growth, they sought legal and corporate advise from experts. They were initially presented with the idea of setting up companies in Indonesia and Singapore, but opted for the proposal to form a holding company that could enter into PDR transactions. It was publicly known that SkyCable, Globe Telecoms, Inc., Cignal TV, and even mass media companies like ABS-CBN and GMA 7, were able to raise funds through their parent holding companies. This was done by obtaining investments from both local and foreign investors through the issuance of PDRs.

Ms. Ressa had no personal experience or technical knowledge of PDRs since she has never entered into a similar type of transaction in the past. They thus hired advisers who were the best experts in their fields to provide advice for restructuring and capital raising. They were told that it was legal in the

18 Id. at 38-39 & 42-43

19 Id. at 47-48 & 52-57

20 Supra. Note 6 at 911

21 Records, Vol. 11, p. 384

22 Id. at 5-50

23 Records Vol. 15, pp. 169-193 (Exh. "15")

Philippines for an operating company to be restructured as a subsidiary of a holding company. It was similarly legal for the latter to raise funds for its subsidiary through the issuance of PDRs. The investors/holders of the PDRs would only provide funding but would not own, control, hold equity or voting interests in the subsidiary.

RHC was thus incorporated on 14 December 2014. Through her extensive global network as an international journalist, Ms. Ressa knew one of the founders of North Base Media (NBM) who was looking at investing in a media start-up in Taiwan. She talked to him about Rappler, which conversation slowly evolved into the PDR investment.

After RHC subscribed to RI's shares, serious discussions and negotiations were made for a possible investment by NBM. RHC bought RI shares because the intention was for the latter to become a subsidiary of the former, with RHC as the parent/holding company. But the two (2) are separate corporations having different purposes, forms of operations, books of accounts and bank accounts, and different SEC registrations.

From the beginning, RHC and NBM were aware of the ownership restrictions of RI. NBM understood that it would never own shares in RI or exercise any form of control over the latter. It knew that RHC would only issue PDRs and not shares of stocks. It also knew that the underlying shares of the PDRs would be owned by and registered in the name of RHC. NBM would have no voting rights with respect to the underlying shares as it is to be retained and exercised only by RHC. It would not receive dividends from RI, as these would be due to and received by RHC. NBM may only receive cash distributions from the latter.

NBM understood and accepted the limitations and restrictions of the PDR transactions and decided to invest in the PDRs. It thus remitted the total cash investment to RHC's bank account. Upon receipt of the cash, RHC and NBM executed a PDR instrument confirming the issuance of 12,028,718 PDRs in favor of NBM. RHC and RI then separately entered into a subscription agreement and all the cash received from NBM, less costs, were thereafter invested by RHC in RI.

RHC then issued PDRs to NBM in two (2) tranches. The first PDR Certificate No. 001 was issued on 29 May 2015²⁴ relating to 264,401 underlying shares in RI. The second PDR Certificate No. 002 was issued on 29 July 2015 relating to 11,764,117 underlying RI shares. The underlying shares were then put in escrow with an escrow agent. All of these matters are clearly reflected in the PDR Instrument and PDR Subscription Agreements.

Meanwhile, after lengthy negotiations with Omidyar, the latter eventually decided to subscribe to RHC's PDRs in October 2015. Omidyar then remitted the total cash investment to RHC's bank account. Afterwards, RHC executed a PDR instrument confirming the issuance of 7,217,257 PDRs in favor of Omidyar. RHC and RI again entered into a subscription agreement and most of the cash received from Omidyar, less costs, were thereafter invested by RHC in RI. On 01 December 2015, RHC issued the third PDR Certificate No. 003 in favor of Omidyar relating to 7,217,257 underlying shares in RI. The underlying

²⁴ Id. at 269-283 (Exh. "21")

shares were subsequently deposited in escrow.

Ms. Ressa insisted that she is not guilty of the criminal offense with which she is charged. The mere fact that she is President of RHC does not make her automatically liable for the criminal offense. She also denied that RHC acted as a dealer in securities relative to the PDR transactions as it never engaged in the business of selling any type of securities. She emphasized that the PDRs were issued pursuant to an investment agreement and with the sole objective of raising capital for RI. Neither did RHC habitually engage in the purchase and resale of securities as there were only two PDR transactions entered into by the company.

According to Ms. Ressa, their right to due process was also violated because there was no proper service of the LOA from the BIR which is necessary to authorize a tax investigation. The LOA was not signed by the BIR Deputy Commissioner for Legal and Inspection Group. The short time frame between the sending of the LOA and the date when the criminal cases were filed also shows that the BIR clearly had no intention to conduct an actual audit of RHC's books.

On cross-examination, Ms. Ressa testified that PDRs are investment instruments or derivatives that are not subject to VAT. She acknowledged that RI increased its authorized capital stock in 2014. Prior to the issuance of PDRs, RHC first subscribed to RI shares at a par value of Php1.00 per share. Meanwhile, it appears from the records that the PDRs had a value of Php9.26 per PDR. Ms. Ressa clarified that the difference in values is not a gain, but an investment in RI's expansion in Southeast Asia.²⁵

The next defense witness was **MARIE FEL D. DALAFU**. She stated in her *Judicial Affidavit*²⁶ that she is an accountant and Chief Financial Officer (CFO) of RHC since December 2014. Her duties and responsibilities include: (1) overseeing and monitoring RHC's tax compliance; (2) accessing and managing RHC's account in the BIR's eFPS; (3) overseeing RHC's receipts and disbursements of funds; (4) preparation of financial reports, books of accounts, and financial statements of RHC; (5) safekeeping and maintaining RHC's records; and (6) monitoring, recording and safekeeping of all pertinent documents and records that have been filed in the DOJ, BIR and with the courts in relation to the cases filed against RHC.

Ms. Dalafu maintained that RHC was never engaged in business as a dealer in securities. The company's actual operations have always been consistent with its purpose as a holding company that holds shares and raises funds for its subsidiary. It has never represented itself to the public as a dealer in securities and does not hold an inventory of shares that is offered for sale to the public for profit. Neither was it ever engaged in active trading of securities.

To support her contention that RHC is a holding company, Ms. Dalafu identified the company's Articles of Incorporation and Certificate of Incorporation issued by the SEC,²⁷ Certification issued by the Market and

²⁵ TSN, Maria A. Ressa (March 22, 2022), pp. 16, 26, 29 & 33-35

²⁶ Records, Vol. 12, pp. 5-96

²⁷ Supra. Note 23 at 51-60 (Exh. "1")

Securities Regulation Department of the SEC on 18 January 2019,²⁸ Certificate of Registration issued by the BIR,²⁹ Mayor's Permit Number IN6 15-0033³⁰ and Mayor's Permit No. IN6-0231.³¹

Meanwhile, to prove that RHC has been consistent with its purpose as a holding company, Ms. Dalafu also presented and identified the following documents: RI's 2015, 2016, 2017 and 2018 GIS,³² RHC's GIS for the years 2015, 2016, 2017 and 2018, a letter issued by RI's former Corporate Secretary certifying the list of RI shareholders of record and that RHC owns 119,434,438 shares or 98.8423% of RI shares as of 31 December 2015,³³ and Audited Consolidated Financial Statements which state that RHC owns 98.84% of RI shares.³⁴ RHC's FS also shows that it did not hold any inventory of shares for sale to the public for profit.

Ms. Dalafu claimed that there was no buying and selling of securities as RHC merely issued PDRs. Even assuming that there was buying and selling of securities, it cannot be said that RHC was habitually engaged in selling securities, considering that it only entered into two (2) PDR transactions. This is shown in the transactional documents executed by RHC relative to the PDRs, such as the Investment Agreements and PDR Subscription Agreements.

Moreover, the PDRs and its underlying shares are totally different and cannot be equated as the same security. The underlying shares remain to be owned by RHC, as evidenced by stock certificates, while PDRs are evidenced by PDR certificates. PDR holders have no voting rights with respect to the underlying shares as the same are retained and exercised by RHC. They also do not receive dividends from either RI or RHC, and may only receive cash distributions from the latter.

Ms. Dalafu further cited a decision of the Court of Appeals dated 16 July 2018 in the case of *Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017* in which it was ruled that PDRs did not make Omidyar a shareholder of RI. Several BIR rulings also affirmed that the underlying shares and PDRs are completely different securities, as PDRs are merely similar to a warrant and/or option to purchase. To protect the PDR holders, the underlying shares are also held in escrow by an escrow agent.

Additionally, the actual use of the funds received by RHC from the PDR transactions shows that these were investments and not sales or revenue. The same were used to cover: (1) the subscription price for RI shares, not only for the premium but also additional paid-in capital; (2) costs incurred in relation to the transaction such as taxes, and (3) advances/special loan from the PDR holders. More importantly, the funds received from the PDR transactions were reserved for a particular purpose and could even be returned given certain conditions. RI also had to increase its capital stock to accommodate the investments generated by the PDR transactions.

28 Id. at 61 (Exh. "2")

29 Id. at 62 (Exh. "3")

30 Id. at 63-64 (Exh. "4")

31 Id. at 65-66 (Exh. "5")

32 Id. at 67-115 (Exhs. "6", "7", "8", and "9").

33 Id. at 166-168 (Exh. "14")

34 Id. at 169-193 (Exh. "15")

In particular, the proceeds received from NBM were partly used as payment for DST relating to the issuance of the PDR Certificates and as investments in RI. The investment of the proceeds is proved by acknowledgement receipts issued by RI, a Report of Factual Findings issued by KPMG and /or R.G. Manabat & Co. that RI received Php110,917,181.00 from accused RHC, and RCBC Bank Certification that RHC converted the amount of US\$750,000.00 to its peso equivalent.

On the other hand, the proceeds from the PDR transaction with Omidyar were used in a similar manner, except that an amount was retained by RHC to finance reasonable general administrative expenses and taxes for which it may be liable in the ordinary course of business. The retained amount was treated as advances in the books of RHC, as shown in Note 7 of its 2015 FS.³⁵


Based on the foregoing, Ms. Dalafu claimed that the BIR's "mark-up" theory is founded purely on speculation. The BIR did not even conduct an audit and examination of RHC's books which show that the company did not gain from the issuance of the PDRs. RHC never hid the PDR transactions from the public and disclosed the same in news articles and in its submissions to government agencies.³⁶ Thus, it cannot be said that RHC willfully and intentionally filed an inaccurate tax return.

On the contrary, RHC filed accurate VAT returns and paid the proper taxes due for tax year 2015. RHC declared and paid the VAT it knows it was liable to pay based on their own understanding of the Tax Code and upon advise of their tax lawyer, Atty. Helen Tiu.

During cross examination, Ms. Dalafu stated that she jointly decides tax issues of RHC together with their hired experts, namely: Atty. Helen Tiu, the law firm Sycip Salazar Hernandez & Gatmaitan (Sycip Law) and independent auditing firm KPMG. Atty. Tiu is an outsourced consultant who is an expert in PDR transactions.³⁷

Ms. Dalafu confirmed that RHC is not a publicly listed company. She admitted that PDRs are derivative securities and the underlying shares are RI's shares. The subscription to RI shares is different from the issuance of the PDRs.³⁸

Ms. Dalafu added that it was Atty. Tiu who interpreted tax laws for RHC. They did not seek an opinion from the BIR regarding the PDR transactions. She also insisted that the BIR did not conduct an actual audit of RHC's books before the criminal case was filed. Finally, Ms. Dalafu said that, according to Atty. Tiu, it is not mandatory for a holding company to be a listed company for it to be able to issue PDRs.³⁹

The last defense witness was **ATTY. HELEN TIU** who also affirmed a *Judicial Affidavit*⁴⁰ that was adopted as her direct testimony. Atty. Tiu testified as 

35 Id. at 210 (Exh. "16-2").

36 Id. at 479-516; 169-193 (Exhs. "43", "44", "45", "46", "47", "15").

37 TSN, Marie Fel D. Dalafu (May 24, 2022), pp. 13-14

38 Id. at 20 & 24

39 Id. at 27, 33 & 36

40 Records, Vol. 13, pp. 79-99

an expert witness and stated that she is a Certified Public Accountant and a lawyer who earned her Bachelor of Laws degree from the University of the Philippines. She also took her Master of Laws, with concentration on Taxation and Securities Regulation, at Harvard University where half of her courses were on Taxation. She also took up Securities Regulation and International Finance.

Atty. Tiu formerly worked at Sycip Law where she principally handled tax structuring and advisory as well as securities and corporate advisory work. She also worked at Sycip Gorres Velayo & Co (SGV) as a Tax Partner for two (2) years. She then set up her own law office, H.G Tiu Law Office, which concentrates on providing legal advice on mergers and acquisitions, joint ventures and tax advisory.

According to Atty. Tiu, she is familiar with PDRs as she has given advice on its tax consequences. She worked on depositary receipt transactions as an associate at Sycip Law and was an external counsel for a Philippine company that issued American Depositary Receipts. In 2013 until around 2015, she was the external counsel of RI and assisted in the incorporation of RHC. She was involved in the implementation of RHC's PDR transactions with NBM and Omidyar.

Atty. Tiu said that RHC was incorporated because the incorporators wanted to grow their business globally. Ms. Ressa, who formerly ran the CNN Jakarta Bureau, wanted to expand RI's news/media services to Indonesia and Singapore. The incorporators wanted to raise funds through the issuance of PDRs, which a number of holding companies in the media industry, such as ABS-CBN and GMA 7, have been doing to raise capital for their subsidiaries. The PDRs of these companies have been listed and are still listed on the PSE.

Atty. Tiu defined a PDR as a derivative security evidenced by a depositary receipt that is issued by an entity which holds shares in another corporation. It is issued to an investor who subscribes or invests in the PDR. The underlying shares usually consist of shares in an operating subsidiary. The PDR gives the holder an option to purchase the underlying shares under certain conditions.

With respect to PDRs issued by Philippine media companies, the exercise of the option is conditioned upon the PDR holder being qualified to purchase the underlying shares under the Constitution and other related laws. Before exercise of the option, the PDR holder is entitled to receive whatever dividends or cash distribution that the PDR issuer received from the operating subsidiary, net of applicable taxes and administrative expenses.

Atty. Tiu further explained the mechanics of a PDR transaction. According to her, there must be an existing operating company (OpCo) and a holding company (HoldCo) that holds the OpCo, or several OpCos as subsidiaries/affiliates. The HoldCo will subscribe to and control majority of the shares of the OpCo, resulting in a restructuring of the OpCo. The HoldCo will then look for potential investors to offer a PDR.

Pursuant to an investment agreement, the investor will then give money to the HoldCo who will use the money to subscribe to shares of the OpCo and fund the latter's operating and administrative expenses. The HoldCo will issue a

PDR to the investor that is backed by the underlying shares of the OpCo. Meanwhile, the OpCo will issue Certificates of Stock to the HoldCo who retains ownership and remains the registered owner of the underlying shares.

Atty. Tiu defined a holding company as one that holds securities of a subsidiary/affiliate for control and management, and not for the purpose of buying and selling securities. This is backed by a SEC Opinion dated 03 November 1983.

For purposes of taxation in the Philippines, a PDR is a derivative security as it derives its value from the underlying shares. Although it partakes of the nature of shares of stock, it is a security that is separate and distinct from the underlying shares and merely gives the holder the option to purchase shares of stock. It is an original issuance and thus only subject to DST. This conclusion is supported by BIR Ruling No. 136-99⁴¹ and ITAD Ruling No. 172-03.⁴²

Atty. Tiu thus opined that RHC's issuance of the PDRs is not subject to VAT. RHC did not sell the PDRs, but originated the same pursuant to an investment agreement with the PDR holders. It was a capital transaction that did not make RHC a dealer in securities within the meaning of the law.

On cross-examination, Atty. Tiu testified that, in rendering an opinion on the tax consequence of the PDR transactions, she examined applicable laws, BIR rulings and ITAD rulings related to the matter. She also took note of events happening in the capital markets of the world and reviewed the Information Memorandum filed with the SEC relative to PDRs issued by Philippine companies. According to Atty. Tiu, she was involved in the issuance by the Philippine Long Distance Telephone Co. (PLDT) of Global Depositary Receipts in 1992 and the issuance of American Depositary Receipts by a NASDAQ-listed Philippine company.

Atty. Tiu also said that BIR rulings and ITAD rulings have persuasive effect and serve as guidance as to how the BIR interprets laws as applied to similar transactions. RHC and RI did not need to secure a BIR ruling on the PDR transactions because it did not opt for a tax-free exchange under Section 40 (C) (2) of the NIRC. Atty. Tiu asserted that her specialization is taxation, securities and corporate law. Thus, she is more than familiar with the applicable laws and rulings issued by the BIR on the taxability of PDRs.⁴³

With no other witness to present, the defense file a Formal Offer of Documentary Evidence⁴⁴ which the court resolved in the Order dated 08 June 2023.⁴⁵ The case was thereafter submitted for decision.

RHC and Ms. Ressa have been charged with violating Section 255 of the 1997 NIRC (Tax Code), as amended, which states:

"SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by the rules and regulations promulgated

41 Supra. Note 23 at 410-412 (Exh. "32")

42 Id. at pp. 413-415 (Exh. "33")

43 TSN, Atty. Helen Go Tiu (December 13, 2022), pp. 34-38 & 43

44 Supra. Note 23 at 1-50

45 Supra. Note 46 at 17

thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, **who willfully fails** to pay such tax, make such return, keep such record, or **supply such correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." (Emphasis Supplied)

According to the prosecution, RHC and Ms. Ressa willfully failed to file a correct and accurate tax return for the 2nd Quarter of TY 2015 as they deliberately did not disclose sales receipts subject to VAT which arose from RHC's PDR transactions with NBM. RHC allegedly acted as a dealer in securities relative to these transactions, when it regularly and continually subscribed to RI's shares and subsequently issued and sold PDRs to NBM and Omidyar on a one-for-one basis. The prosecution theorized that the shares and PDRs are one and the same, considering the immediacy of the sale and the beneficial ownership given to NBM of the underlying RI shares under the PDR Instruments. Thus, the resulting difference between the subscription value of RI shares and the selling price of the PDRs to NBM allegedly gave rise to vatable gains for RHC which the latter should have declared in its VAT return.

There is no question here that a PDR is a form of security. The PSE website describes a PDR as a document that gives the holder a right, but not an obligation, to purchase underlying shares at a specified price, or the right to the delivery of the sales proceeds of the underlying shares.⁴⁶ It is a security which grants the holder the right to the delivery or sale of the underlying share and consists of a deposit price and option price which is considered as payment when the buyer opts to convert the PDRs to a corporation's share.⁴⁷ A PDR is a warrant and/or option to purchase shares of stock⁴⁸ under Section 3(d) of Republic Act No. 8799 or the Securities Regulation Code.⁴⁹ It is a derivative security whose value depends upon the underlying share.

On the other hand, Section 22 (U) of the Tax Code defines a dealer in securities as "a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers x x x, with a view to the gains and profits that may be derived therefrom." Section 3.4 of the Securities Regulation Code also defines a "dealer in securities" as one who buys and sells securities for his/her own account in the ordinary course of business. For RHC to be regarded as a dealer in securities, therefore, it was incumbent upon the prosecution to prove that RHC bought RI shares for resale as PDRs to customers, in the ordinary course of business, for the specific purpose of obtaining gains or profits.

46 BIR Revenue Memorandum Order No. 46-2020 dated 23 December 2020; bir.gov.ph

47 pseacademy.com.ph

48 BIR Ruling No. 136-99 dated 30 August 1999; Supra. Note 23 at 410-411

49 Section 3. Definition of Terms. - "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes:

x x x

(d) Derivatives like option and warrants;

In this case, the prosecution evidence shows that RHC did not in fact habitually and consistently engage in the purchase of RI's shares and resale of PDRs to customers. Per Ms. Quilantang, as of the time they conducted their investigation in 2018, RHC had no other PDR transactions except those of NBM and Omidyar in 2015. The purchase of RI's shares and issuance of PDRs to NBM and Omidyar appears to be an isolated series of transactions that were undertaken within a limited period of time. Ms. Quilantang herself testified that RHC had no other significant business transactions during the relevant period except for the PDR transactions with NBM and Omidyar.

Thus, there is no showing that RHC pursued the PDR transactions in the ordinary course of business or undertook these as part of its usual business operations. While RHC indeed issued securities to NBM and Omidyar in the form of PDRs, there was no regularity in these transactions as to indicate that RHC acted as a dealer in securities. Rather, it is apparent that RHC entered into these transactions pursuant to its avowed purpose as a holding company, which is stated in its Articles of Incorporation, thus:

"To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of real and personal properties of every kind and description and wherever situated, as and to the extent permitted by law, including, but not limited to, shares of capital stock, bonds, debentures, promissory notes, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and real estate, whether improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouses, factories, edifices and structures and other improvements, and while the owner, holder or possessor thereof, to exercise any and all rights, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer in securities."⁵⁰ (Emphasis Supplied)

In *Maricalum Mining Corporation v. Ely G. Florentino, et al.*,⁵¹ the Supreme Court explained the concept of a holding company in this wise:

"A parent or holding company is a corporation which owns or is organized to own a substantial portion of another company's voting shares of stock enough to control or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4(a) of Republic Act No. 2629 as 'any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.'

In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or

⁵⁰ Supra. Note 23 at 54

⁵¹ G.R. No. 221813 (July 23, 2018)

umbrella structure along with other subsidiaries. x x x"

A holding company may also be organized "to raise large capital for subsidiaries that have limited access to financing or are restricted to do so by regulatory agencies or for other various reasons."⁵² As may be deduced from the testimonies of Ms. Ressa and Atty. Tiu, RHC was created precisely to raise capital for the global expansion of RI, which had foreign equity restrictions. Consequently, RI had to be restructured as a subsidiary of RHC in order to facilitate the infusion of capital from foreign investors.

RHC's Articles of Incorporation quoted above authorized it to "deal in and with" shares of stock or other securities, provided that it does not act as a dealer in securities. As such, RHC could legally engage in transactions involving PDRs to raise funds for its wholly-owned subsidiary. Its transactional activities relative to the PDRs are consistent with the purpose for which it was created. However, these financial or investment activities did not necessarily transform RHC from a holding company into a dealer in securities.

Apart from the fact that the PDR transactions undertaken by RHC were neither regular nor recurring, RHC also did not gain any profit from these business activities. As stated earlier, a PDR is merely an option to purchase stocks that gives a holder the right to subscribe to the shares of a corporation.⁵³ While it is in the nature of a security, it is not the same as the underlying shares.

Notably, the *PDR Subscription Agreements*⁵⁴ pertaining to NBM provide:

"(A) NBM wishes to subscribe to certain Philippine Deposit Receipts ('PDRs') to be issued by RHC in accordance with and under the terms of the Philippine Deposit Receipt Instrument to be executed by RHC in favor of the holders of the PDRs (the '**PDR Instrument**'), each such PDR to be backed up by one common share issued by Rappler Inc. ('**Rappler**') registered in the name of RHC, and which confers on the holder thereof the rights enumerated in the PDR Instrument relating to certain shares of Rappler (the '**Underlying Shares**')"

The "rights" mentioned above are enumerated in Paragraph 5 of the PDR Instrument and include the delivery of the underlying shares upon the holder's exercise of the option to purchase the same.⁵⁵ If the holder is not permitted under Philippine laws to own the underlying shares, the issuer shall cause the sale of the PDRs and deliver its proceeds to the holder.⁵⁶ Pending exercise of such option, the holder merely has the right to receive cash distributions.⁵⁷

The PDR Instrument also stipulates that the underlying shares shall be owned by the issuer. Stock certificates representing the underlying shares will be held in escrow by an escrow agent. The holder shall have no voting rights as to the underlying shares, as the said rights shall be retained and exercised only by the issuer.⁵⁸

52 "Holding Companies: A Structure for Managing Diversification" by Erlinda S. Echanis, Philippine Management Review (2009), Vol. 16, pp. 1-12; pmr.upd.edu.ph

53 BIR Ruling No. 136-99 (August 30, 1999)

54 Supra. Note 23 at 251 & 258

55 Paragraph 6, PDR Instrument ("Exh. 21")

56 Paragraph 5.4 and 10.2, PDR Instrument ("Exh. 21")

57 Paragraph 9, PDR Instrument ("Exh. 21")

58 Paragraph 4, PDR Instrument ("Exh. 21")

As to the nature of the PDR subscription price, the PDR Instrument specifically states:

"5.5 Where PDRs are issued for cash, the PDR Subscription Price received by the Issuer shall be treated by the Issuer as a deposit (the 'Deposit') to be applied by the Issuer on exercise of the PDR Exercise towards payment for the relevant Underlying shares, without prejudice to the Issuer's use of the PDR Subscription Price pending exercise of the PDR Exercise Right. The Issuer agrees that on exercise, only the Exercise Price shall be payable. The consideration for the Underlying Shares to be delivered on exercise of the PDRs shall be the Exercise Price and the application of the Deposit allocable to the Underlying Shares."

It is thus apparent that the PDRs are distinct from the underlying shares, as the PDRs merely represent an option given to the holder to purchase the underlying shares. The amount received by RHC for the issuance of the PDRs is treated as a deposit for future subscription to the underlying shares, if and when the option is exercised. But pending exercise of the option, RHC could use the PDR subscription price for the conduct of its business or in pursuance of its corporate purpose as a holding company.

Consequently, the PDR subscription price cannot be regarded as a gain, income or profit on the part of RHC. It was not given as consideration for the sale of shares of stock in RI, but was intended as capital or investment for RHC to subscribe to RI shares. This much was explained by Ms. Ressa and Atty. Tiu in their respective testimonies. This intention was evident in the PDR Instrument and Subscription Agreements as well.

In *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*,⁵⁹ the Supreme Court differentiated "capital" from "income" as follows:

"The distinction between 'capital' and 'income' is well-settled in our jurisprudence. As held in the early case of *Madrigal v. Rafferty*, 'capital' has been delineated as a 'fund' or 'wealth,' as opposed to 'income' being the flow of services rendered by 'capital' or the service of wealth:

Income as contrasted with capital or property is to be the test. The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. Capital is wealth, while income is the service of wealth. x x x The Supreme Court of Georgia expresses the thought in the following figurative language: 'The fact is that property is a tree, income is the fruit; labor is a tree, income the fruit; capital is a tree, income the fruit.' x x x A tax on income is not a tax on property. 'Income,' as here used, can be defined as "profits or gains."

In *Conwi v. Court of Tax Appeals*, the Court elucidated that "income may be defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of fruits of one's labor." (All Citations Omitted)

In this case, the PDR subscription price was an investment on the part of the PDR holder who is entitled to a cash distribution based on the value of the underlying shares. In one case, "investment" was defined as "the placement of capital or lay out of money in a way intended to secure income or profit from its

59 G.R. No. 228539 (June 26, 2019)

employment.”⁶⁰ The PDR subscription price cannot be regarded as a revenue on the part of RHC as it was solely intended to be used as a fund for RHC to subscribe to RI shares, and treated as a deposit by NBM to any future subscription to RI’s shares. It was a “capital” obtained by RHC to generate revenue, but is not the revenue itself.


Consequently, RHC did not act as a dealer in securities, through Ms. Ressa, when it issued the PDRs to NBM. The PDR transactions were investment activities that were in line with RHC’s primary purpose as a holding company of RI. RHC did not sell the PDRs to NBM in the regular course of its business to gain profit, but issued the PDRs as part of a larger scheme to legally raise capital for its subsidiary. It is thus not liable to pay VAT on these transactions under Section 105 of the Tax Code.⁶¹

At this point, it must be inevitably concluded that RHC and Ms. Ressa did not violate Section 255 of the Tax Code. The PDR subscription price were not proceeds arising from the sale of the PDRs to NBM that should have been declared in RHC’s VAT return. As a result, it cannot be said that RHC willfully filed an inaccurate VAT return or that it is liable for any deficiency VAT relative to the PDR transaction with NBM. RHC and Ms. Ressa are thus absolved from any criminal or civil liability in this case.

WHEREFORE, in view of the foregoing, the accused Rappler Holdings Corporation and Maria A. Ressa are hereby **ACQUITTED** in Criminal Case No. R-PSG-18-02983-CR for violation of Section 255 of the 1997 National Internal Revenue Code, as amended, on the ground that they did not commit the offense charged in the Information. Meanwhile, the civil aspect of the case is **DISMISSED**.

SO ORDERED.

Pasig City, Philippines
September 12, 2023


ANA TERESA T. CORNEJO-TOMACRUZ
Presiding Judge

60 Merian Santiago v. Spouses Edna L. Garcia and Bayani Garcia (G.R. No. 228356, 09 March 2020)

61 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 value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

x x x

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, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members of their guests), or government entity.

x x x