REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1028** (NPS No. XV-05-INV-22L-3294) For: Violation of Sec. 255 of National Internal Revenue Code of 1997, as amended
-versus-	**Members:**
SCOTT JAMES O. RIVERA (24 Lapu-Lapu Ave. cor. San Geronimo St., Magallanes Village, Makati City) and **MARK JOSEPH A. DE GUIA,** (Unit 320, 3rd flr., Civic Prime Bldg., Filinvest Corporate City, Alabang, Muntinlupa City), *Accused.*	**MANAHAN,** *Chairperson,* and **REYES-FAJARDO** *JJ.* Promulgated: JUL 17 2023 4:00 p.m.

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RESOLUTION

In the Resolution dated May 8, 2023, the Court directed the prosecution to submit proof of actual receipt of the Assessment Notices and Formal Assessment Notices with Details of Discrepancies.

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals states:

> SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.** If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. **In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, ex parte, within five days from notice.** (Emphasis supplied)

The Records Verification dated June 21, 2023 states that the prosecution failed to comply with the Resolution of the Court.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On March 3, 2023, an Information was filed against accused Scott James O. Rivera and Mark Joseph A. De Guia indicting them of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which states:

> That on or about February 18, 2021 and thereafter, in the city of Makati, the Philippines, accused SCOTT JAMES O. RIVERA and MARK JOSEPH A. DE GUIA, being then the President and Treasurer of Technostore, Inc., which is registered at BIR with Taxpayer Identification Number 008-920-479-000, did then and there willfully, unlawfully and feloniously refuse and fail to pay the basic value added tax deficiencies for taxable period of January 01, 2018 to June 30, 2018 in the total amount of Forty Nine Million Nine hundred Seventy Five thousand Eighty Nine Pesos and 95/100 (₱49,975,089.95), exclusive of surcharge, interest and penalty, despite final assessment and repeated formal demands to the damage and prejudice of the Government of the Republic of the Philippines.
>
> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated February 27, 2023 issued by Senior Assistant City Prosecutor Mark Gjefferson E. Pabalate, recommending that accused Jethro M. Sabariaga be charged for violation of Section 255 of the NIRC of 1997, as amended;

2. Letter of Regional Director Jethro M. Sabariaga to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused; and

3. Joint Complaint-Affidavit (JCA) of Mohamad Ali Rodi and Amiel Bryan Bautista executed on December 13, 2022 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Audited Financial Statement;[2]
c. Letter of Authority dated September 13, 2018;[3]
d. Notice for the Presentation/Submission of Documents/Records dated September 14, 2018;[4]
e. Letter of Authority dated September 11, 2019;[5]
f. Notice for Informal Conference dated January 22, 2020;[6]
g. Letter of Authority dated September 9, 2020;[7]
h. Notice for Informal Conference (Amended) dated September 30, 2020;[8]
i. Preliminary Assessment Notice dated October 28, 2020;[9]
j. Details Of Discrepancies dated October 28, 2020;[10]
k. LBC Receipts;[11]
l. Assessment Notice dated January 19, 2021;[12]
m. Formal Letter of Demand dated January 19, 2021;[13]
n. Details Of Discrepancies dated January 19, 2021;[14]
o. LBC Receipts;[15]
p. Memorandum of Assignment dated July 26, 2021;[16]
q. Letter to Mark Joseph A. De Guia dated August 16, 2021;[17]

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[1] Annex "A," JCA.
[2] Annex "B," JCA.
[3] Annex "C," JCA.
[4] Annex "D," JCA.
[5] Annex "E," JCA.
[6] Annex "F," JCA.
[7] Annex "G," JCA.
[8] Annex "H," JCA.
[9] Annex "I," JCA.
[10] Annex "I-1," JCA.
[11] Annexes "I-2" to "I-3"," JCA.
[12] Annex "J," JCA.
[13] Annex "J-1," JCA.
[14] Annex "J-2," JCA.
[15] Annexes "J-3" to "J-4," JCA.
[16] Annex "K," JCA.
[17] Annex "L," JCA.

r. Letter to Scott James Ortega Rivera dated August 16, 2021;[18]
s. Letter to Scott James Ortega Rivera dated August 16, 2021;[19]
t. Letter to Ramon Lance S. Tan dated August 16, 2021;[20]
u. Letter to Erick R. Martinez dated August 16, 2021;[21]
v. Letter to Scott James Ortega Rivera dated August 16, 2021;[22]
w. Letter to Ryan Gerardo P. Ilagan dated August 16, 2021;[23]
x. Letter to Ramon Lance S. Tan dated August 16, 2021;[24]
y. Letter to Mark Joseph A. De Guia dated August 16, 2021;[25]
z. Letter to Erick R. Martinez dated August 16, 2021;[26]
aa. Letter to Ryan Gerardo P. Ilagan dated August 16, 2021;[27]
bb. Warrant of Distraint and/or Levy dated September 30, 2021;[28] and
cc. Warrants of Garnishment dated November 2, 2021.[29]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[30] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was

[18] Annex "L-1," JCA.
[19] Annex "L-2," JCA.
[20] Annex "L-3," JCA.
[21] Annex "L-4," JCA.
[22] Annex "L-5," JCA.
[23] Annex "L-6," JCA.
[24] Annex "L-7," JCA.
[25] Annex "L-8," JCA.
[26] Annex "L-9," JCA.
[27] Annexes "L-10," JCA.
[28] Annex "M," JCA.
[29] Annexes "N" to "N-17," JCA.
[30] G.R. Nos. 48134-37, October 18, 1990.

> only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the prosecution claimed that the Assessment Notices with attached Details of Discrepancies were duly served to accused. However, the records of the case will show that there was no evidence that the Assessment Notices with attached Details of Discrepancies both dated January 19, 2021 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice