24-000472-0004

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1210

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SMALLVILLE INFORMATION TECHNOLOGY ENTERPRISE CORPORATION, ANGELBERT BALASICO and THELMA BALASICO,
Accused.

NOTICE OF RESOLUTION

To:

CITY PROSECUTOR DINDO G. VENTURANZA
SR. ASST. CITY PROSECUTOR EDMUND H. SEÑA
SR. ASST. CITY PROSECUTOR PAULO A. TALBAN
Department of Justice
Office of the City Prosecutor - Makati City
16th Floor, Makati City Hall (New Building)
J.P. Rizal, Brgy. Poblacion
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. JOCELYN P. LUMBRES
ATTY. RHODA D. QUIAMBAO
Bureau of Internal Revenue - Revenue Region No. 8A
36th Floor, Exportbank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

GREETINGS:

You are hereby notified by these presents that on **March 26, 2025, a** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 27, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SMALLVILLE INFORMATION TECHNOLOGY ENTERPRISE CORPORATION, ANGELBERT BALASICO and THELMA BALASICO
9/F Vicente Madrigal Building, 6793 Ayala Ave., 1227 Makati City,
Accused.

CTA CRIM. CASE NO. O-1210
For: Violation of Section 255 in relation to Section 256 of National Internal Revenue Code of 1997, as amended

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 26 2025 10:40 AM

x - x

RESOLUTION

In a Resolution dated October 30 2024,[1] this Court ordered plaintiff to submit the original Information and the original or certified true copy of the proof of service of the Subpoena dated January 9, 2024 within five (5) calendar days from receipt thereof. Based on the records, plaintiff received the said Resolution on November 11, 2024.[2] Counting five (5) days therefrom, plaintiff had until November 18, 2024[3] to comply with the Court's directive.

However, per Records Verification dated November 26, 2024,[4] plaintiff failed to file a compliance within the prescribed period.

An examination of the Subpoena[5] for accused reveals that the same was addressed to **Level 21, Tower 2, The Enterprise Center,**

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[1] CTA Docket, pp. 108-111.
[2] Resolution dated November 4, 2024, CTA Docket, p. 107.
[3] November 16, 2024, the 5th day from November 11, 2024, fell on a Saturday. Hence, the adjusted deadline to file compliance is the next working day, November 18, 2024.
[4] CTA Docket, p. 112.
[5] CTA Docket, p. 14.

6766 Ayala Avenue, 1226 Makati City. However, based on the Joint Complaint-Affidavit[6] and Information[7], accused's address is at **9/F Vicente Madrigal Building, 6793 Ayala Avenue, 1227 Makati City**. Evidently, accused could not have been notified of the scheduled preliminary investigation set on January 23 and 30, 2024, as the subpoena was served to a different address.

A **preliminary investigation is required** to be conducted before the filing of a complaint or information for an offense **where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day** without regard to the fine.[8]

In *Atty. Roderick M. Santos and Alexander Andres vs. Judge Lauro Bernardo, Municipal Trial Court, Bocaue, Bulacan*,[9] the Supreme Court clarified that the need for a preliminary investigation depends upon the **imposable penalty** for the crime charged in the complaint or information filed.

In this case, both the Joint Complaint-Affidavit and the Information charges accused with *failure to value-added tax* pursuant to Section 255 in relation to Section 256 of the National Internal Revenue Code of 1997, as amended. Such offense is penalized with a fine of not less than ten thousand pesos (₱10,000) and **imprisonment of not less than one (1) year but not more than ten (10) years**.

Considering that the maximum imposable penalty for the offense charged against accused is ten (10) years, a preliminary investigation is required.

In *Johanne Edward B. Labay vs. Sandiganbayan, Third Division and People of the Philippines*,[10] the Supreme Court explained that the right to a preliminary investigation is not a formal or technical right but a substantive one, to wit:

> The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and be formally at risk of incarceration or some other penalty is not a mere formal or technical right. It is a substantive right since the accused in a criminal trial is

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[6] CTA Docket, pp. 18-25.
[7] CTA Docket, pp. 5-6.
[8] Section 1, Rule 112, Rules of Court.
[9] A.M. No. MTJ-07-1670, July 23, 2008.
[10] G.R. Nos. 235937-40, July 23, 2018.

> inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.

The primary objective of a preliminary investigation is to free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon in a more or less summary proceeding by a competent office designated by law for that purpose. Secondarily, such summary proceeding also protects the state from the burden of the unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.[11]

It may be true that, as a rule, in the absence of a preliminary investigation, the courts should, instead of dismissing the case, conduct the investigation or order the prosecutor to conduct it.[12] This rule, however, presupposes that the defendant has been properly subpoenaed by the prosecutor, is already participating in the judicial proceedings, and has timely raised the absence of a preliminary investigation.

Nonetheless, jurisprudence abound confirming that in certain circumstances, the court is mandated to dismiss the case in the absence of preliminary investigation.

In *Labay*, the Supreme Court noted that during the preliminary investigation by the Office of the Ombudsman, efforts to serve notices to petitioner therein Labay were unsuccessful as he was no longer employed in the office where the notices were sent and he was unknown at the given residential address. Despite this, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay, and eventually found probable cause to charge him. Petitioner Labay was made aware of these charges only when his daughter came across press releases about the case. Upon learning about the said proceeding, he twice sought a reinvestigation, arguing that he had been denied of his right to due process as he was not notified of the proceedings. The Ombudsman denied his requests, and proceeded with the preliminary investigation.

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[11] *Rhodora M. Ledesma vs. Court of Appeals,* G.R. No. 113216, September 5, 1997.
[12] *The Minor Francisco Juan Larranaga vs. Court of Appeals,* G.R. No. 130644, March 13, 1998.

The Supreme Court ruled that petitioner Labay's constitutional right to due process was violated when he was not furnished a copy of the complaint affidavit and its attachments during the preliminary investigation. As a result, the Supreme Court (1) cancelled and set aside the Resolutions issued by the Sandiganbayan, Third Division in the criminal cases, and, (2) ordered the Office of the Special Prosecutor to file motions to withdraw Information in the said criminal cases.

Similarly, in *Rodrigo R. Duterte vs. Sandiganbayan*,[13] the Supreme Court found that petitioners therein had no knowledge that they were the subject of a preliminary investigation. The order issued by the Graft Investigator failed to indicate that such preliminary investigation was being conducted. Consequently, the Supreme Court concluded that the preliminary investigation did not comply with procedural requirements. As a result, the Supreme Court ordered the dismissal of the criminal case against the accused, holding that they were not sufficiently apprised of the charges against them during the preliminary investigation.

Based on the foregoing rulings, *Labay* requires that, at the very least, respondent must be served with a subpoena along with a copy of the complaint and its supporting affidavits and documents as required under Section 3(d), Rule 122 of the Revised Rules of Criminal Procedure. Moreover, *Duterte* underscores the requirement that during the preliminary investigation, respondent must be sufficiently apprised of the charges against them to ensure compliance with due process.

In this case, accused were not only unaware of the charges against them, but were not in the first place served with subpoena along with the copy of the complaint and its supporting affidavits and documents. In *Duterte*, the Supreme Court held that even though the respondents therein had received a copy of the order from the Graft Investigator, the order itself failed to inform them that a preliminary investigation was being conducted. **Here, where no notices were received whatsoever, there is even greater reason to conclude that accused had absolutely no knowledge that they were subjected to a preliminary investigation, let alone the proceedings before this Court**.

Section 3(d), Rule 122 of the Revised Rules of Criminal Procedure indeed allows the investigating officer to resolve the

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[13] G.R. No. 130191, April 27, 1998.

complaint based on the evidence presented by the complainant if the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits. However, this provision does not apply in the absence of a genuine effort to serve the subpoena.

A review of the records reveals no indication that such an effort was made. Respondent cannot be considered "unreachable" when, in actuality, the subpoena was never properly issued due to a blatant error in the address. Rather than ensuring that accused was given a fair opportunity to participate in the preliminary investigation – by verifying why the notices were unserved and taking steps to remedy the same – plaintiff hastily proceeded with the investigation believing that indeed respondent was unreachable for purposes of conducting the preliminary investigation.

Verily, the conclusion reached by plaintiff in justifying the filing of the Information was rendered prematurely.

Following *Labay* and *Duterte*, the case should be dismissed for failure to accord respondents with their right to due process.

Indeed, accused's non-receipt of the subpoena, and their non-participation in the preliminary investigation through no fault of their own, violates their right to due process. Such violation warrants the dismissal of the present case.

WHEREFORE, premises considered, the present case is hereby **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON OFFICIAL BUSINESS
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice