Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ANA NAIG
MIGUELITO PLANILLAS
Both of G. Tambunting Pawnshop
909 Delpan Street, Tondo Manila,
Accused.

CTA Crim. Case No. 0-060
(I.S. NO. 05D-07990)
For: VIOLATION OF SECTION 255 IN RELATION TO SECTIONS 253 (d) AND 256 OF THE TAX CODE AS AMENDED BY REPUBLIC ACT NO. 8424

Members:
ACOSTA, *Chairperson,*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAR 05 2008 ; 10:00 am

x- -x

RESOLUTION

On January 3, 2008, the Court promulgated a Resolution, to wit:

> *"However, upon verification from the Records Division of the Court, Assistant City Prosecutor I Leoncio D. Suarez Jr. has not yet complied with the above-cited Resolution. Assistant City Prosecutor I Leoncio D. Suarez Jr. is hereby* ***ORDERED*** *to comply with the October 18, 2007 Resolution, within a non-extendible period of five (5) days from receipt hereof. Fail not under penalty of law.*
>
> ***SO ORDERED."***

In compliance with the above-quoted Resolution, Asst. City Prosecutor I Leoncio D. Suarez Jr. filed a Compliance/Manifestation, informing the Court that there were no other additional evidence available on their records, or under his possession or custody. In the interest of substantial justice, the said Compliance/Manifestation is hereby **NOTED**.

The Court is now tasked with the evaluation of the Resolution and Information, as well as, the supporting documents/evidence filed by the Public Prosecutor for the determination if there is probable cause to go on with the prosecution of the case.

Section 6(a), Rule 112 of the Revised Rules of Court provides that:

> "**Sec. 6. When warrant of arrest may issue**. – (a) By the Regional Trial Court.- Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from filing of the complaint or information."

Once an Information is filed, the determination of the presence or absence of probable cause for the issuance of a warrant of arrest against the accused, or for the withdrawal of the Information, or for the dismissal of the case, is addressed to the sound discretion of the Court (*Sarigumba, et. al. vs. Sandiganbayan, 451 SCRA 533*). As defined, the determination of the existence of probable cause depends on such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. It is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that

33

he has lawful grounds for arresting the accused. (*Allado vs. Diokno, 232 SCRA 192*)

Attached with the Information filed against the two accused, ANA NAIG and MIGUELITO PLANILLAS, were the following documents/pieces of evidence, to wit:

1. The Resolution of Assistant City Prosecutor I, Leoncio D. Suarez Jr., finding probable cause against herein accused;

2. The letter of Regional Director Alfredo V. Misajon to the City Prosecutor of Manila, recommending the immediate criminal prosecution of Ms. ANA NAIG (Branch Manager) and MIGUELITO PLANILLAS (Responsible Officer) of G. Tambunting Pawnshop Co.,Inc.;

3. Affidavit of JOSEFINA T. AGAPINAN, Legal Officer of the BIR Revenue Region No. 6, Manila. Attached therewith were the following exhibits:

    a. Copy of the Assessment Notice No. 29-1-0000685-98 for deficiency income tax liability for the taxable year 1998 and demand letters, all issued on March 15, 2002 and marked as Annexes "A", "A-1", and "A-2" respectively;

    b. Copy of the Assessment Notice No. 29-1-0000685-98 for deficiency VAT liability for the taxable year 1998 and demand letters, all issued on March 15, 2002 and marked as Annexes "B", "B-1" and "B-2" respectively;

    c. Copy of the Assessment Notice No. 29-1-0000685-98 for deficiency DST liability for the taxable year 1998 and demand letters, all issued on March 15, 2002 and marked as Annexes "C", "C-1", and "C-2" respectively;

    d. Copy of the Warrant of Distraint and/or Levy dated July 30, 2004 and received by a certain Jovita C. Trinidad and marked as Annex "D"; and

34

e. Copy of the Demand Letter of Regional Director Alfredo V. Misajon to ANA NAIG (Branch Manager) and MIGUELITO M. PLANILLAS (Responsible Officer) of G. Tambunting Pawnshop Co. Inc., dated November 18, 2004 and marked as Annex "E";

f. Copy of the letter of Regional Director to the Commissioner of Internal Revenue dated July 28, 2006 requesting approval of the criminal actions against individual taxpayers/responsible officers of corporate taxpayers in Revenue Region 6, City of Manila, listed therein. Accused ANA NAIG and MIGUELITO PLANILLAS were included in the said list.

From the foregoing documents, accused ANA NAIG and MIGUELITO PLANILLAS were charged with the crime of Violation of Section 255 in relation to Sections 253 (d) and 256 of the Tax Code, as amended by Republic Act No. 8424, which are quoted hereunder for reference, to wit:

> "**Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation**.- Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct 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.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, 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 three (3) years."

"**Sec. 253. General Provisions**.-

(a) xxx xxx xxx
(b) xxx xxx xxx
(c) xxx xxx xxx
(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 employees responsible for the violation."

"**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 (P50,000.00) but not more than One Hundred Thousand Pesos (P100,000.00)."

Evidently, based on the above provisions of law, before a taxpayer may be held criminally liable, it must be shown that:

1. a person under the Tax Code or by the rules and regulation is required to pay the tax, make a return, keep any record, or supply correct and accurate information;

2. such person 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; and

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

36

Under the above provisions of the 1997 Tax Code, the responsible officers of the erring corporation shall be held liable for the acts and/or omissions by the former.

In the case at bar, Complainant-Bureau of Internal Revenue (BIR), represented by Josefina T. Agafinan of its Legal Division, filed a complaint against Ms. ANA NAIG and MIGUELITO PLANILLAS, alleged Branch Manager and Responsible Officer, respectively of G. Tambunting Pawnshop Co., Inc., for violation of Section 255 of the 1997 NIRC, as amended, in relation to Sections 253 (d) and 256 of the same Code. Such criminal charge was brought about by the non-payment of the accused of deficiency internal revenue taxes for the year 1998 under Assessment Notice No. 29-1-0000685-98 and demand letters all issued on March 15, 2002. Despite repeated demands made upon the subject taxpayer, the latter failed and refused to pay the aforestated tax liabilities. Thus, the said Assessment Notice became due and demandable and had been incontestable.

During the preliminary investigation, only the representative of the complainant appeared. Respondents failed to appear despite notice being sent to them. Assistant City Prosecutor I Leoncio D. Suarez, Jr. rendered a resolution finding probable cause against the accused based on the facts and pieces of evidence presented in the said investigation.

However, going over the records of this case, the Court finds that no probable cause exists to prosecute the case against herein accused ANA NAIG and MIGUELITO PLANILLAS. The pieces of evidence submitted before the Court were not sufficient to show both accused as responsible officers of G. Tambunting Pawnshop Co., Inc. Aside from the mere assertions of the BIR in its complaint-affidavit and its attached annexes, the resolution of the public prosecutor, and the Information filed before this Court, there were no other documents that would indicate that accused ANA NAIG and MIGUELITO PLANILLAS are the Branch Manager and Responsible Officer, respectively, of G. Tambunting Pawnshop, Co., Inc. Records likewise disclose that the Commissioner of Internal Revenue only approved the filing of criminal charges against ANA NAIG, as contained in the letter dated July 28, 2006 of Regional Director Alfredo V. Misajon to the Commissioner. All told, the allegations made by the complainant-BIR were self-serving statements that would not convince this Court to find probable cause for the prosecution of both accused.

WHEREFORE, premises considered, the case against herein accused ANA NAIG and MIGUELITO PLANILLAS is hereby **DISMISSED** for failure of the prosecution to show probable cause.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

38