REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-638
(NPS Docket No. XV-07-INV-17D-02115)
For: Violation of Section 255, in relation to 256, of the NIRC of 1997, as amended

-versus-

Members:
CASTAÑEDA, JR.,
Chairperson
CASANOVA, *and*
MANAHAN, *JJ.*

ROBIGIE CORPORATION, DOLORES M. GALICIA AND GRACE G. SUCKSUPHAN,
Accused.

Promulgated:
AUG 01 2017
4:00 p.m.

x- -x

RESOLUTION

On July 13, 2017, an Information was filed by the prosecution against the accused Robigie Corporation, Dolores M. Galicia and Grace Sucksuphan for violation of Section 255 in relation to Section 256 of the 1997 National Internal Revenue Code (NIRC), as amended, which reads as follows:

> "The undersigned accuses ROBIGIE CORPORATION, DOLORES M. GALICIA and GRACE SUCKSHUPAN of a violation of Section 255 in relation to Section 256 of the NIRC, committed as follows:
>
> That on or about January 12, 2015, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, ROBIGIE CORPORATION and its Corporate President and Treasurer, DOLORES M. GALICIA and GRACE G. SUCKSHUPAN, respectively with business address located at 1618 Alvarez St., 339, Zone 34, Sta. Cruz, in this City, having filed its Annual Income Tax Return (AITR) for taxable year 2011 with attached Financial Statements (FS) dated April 16, 2012, it

has been found that there is due and collectible tax from said corporation, to wit: Deficiency in Value-Added Tax in the amount of Php2,861,197.50 and without formally protesting against or appealing the same, did then and there willfully and unlawfully failed to file return, supply correct and accurate information in the tax return and refused to and neglected to pay the correct amount of tax despite notice and demand made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php2,861,197.50, Philippine Currency.

CONTRARY TO LAW."

Attached thereto are the following documents:

1) Resolution dated June 13, 2017 issued by Senior Assistant City Prosecutor Dennis E. Aguila, and duly approved by Senior Assistant City Prosecutor Joh Erick R. Flordeliza, recommending the indictment in Court of herein accused DOLORES M. GALICIA and GRACE G. SUCKSHUPAN in their capacity as President and Treasurer respectively of ROBIGIE CORPORATION;

2) Investigation Data Form of the Department of Justice (DOJ) dated April 17, 2017 certified to by Lorna A. Lazaro and Jefferson T. Ocampo;

3) Referral letter dated April 17, 2017 issued by Regional Director Arnel SD. Guballa, on behalf of the Commissioner of Internal Revenue, addressed to the City Prosecutor of the City of Manila, to conduct preliminary investigation and file the necessary information in court against the accused in their capacity as President and Treasurer of Robigie Corporation, with the following attachments:

   a) Joint Complaint-Affidavit of BIR revenue officers Lorna T. Lazaro and Jefferson T. Ocampo with office address at the Legal Division, Revenue Region No. 6;

   b) Assessment Notices Nos. 31-11-IT-7070; 31-11-VT-7071; 31-11-WE-7072 covering the taxable period 2011 issued against Robigie Corporation all dated January 12, 2015 including the corresponding Formal Letter of Demand (FLD) likewise dated January 12, 2015;

   c) General Information Sheet (GIS) of Robigie Corporation filed with the Securities and Exchange Commission (SEC) covering the period November15, 2010 showing among others, the names of Grace G. Suckshupan and Dolores M. Galicia as Treasurer and President, respectively, of Robigie Corporation;

d) Annual Income Tax Return of Robigie Corporation for the taxable period 2011 and the corresponding audited financial statements for the same taxable period;

e) Letter of Authority (LOA) issued by Regional Director, Simplicio Madulara of Revenue Region No. 6, authorizing the examination of the books of accounts and other accounting records of Robigie Corporation for the period January 1, 2011 to December 31, 2011;

f) First Notice from the Revenue District Officer dated April 23, 2013 issued to Robigie Corporation for the presentation of accounting records mentioned in the list attached to said notice;

g) Second and Final Notice from the Revenue District Office dated May 16, 2013 issued to Robigie Corporation requesting the latter to allow access to its accounting records;

h) Subpoena Duces Tecum issued on June 4, 2013 signed by the Commissioner of Internal Revenue against Robigie Corporation;

i) Post Reporting Notice dated November 21, 2013;

j) Memorandum prepared by Revenue Officer, Vicente Santiago addressed to the Revenue District Officer of Revenue District No. 31, Revenue Region No. 6;

k) Preliminary Assessment Notice (PAN) issued against Robigie Corporation for taxable year 2011;

l) Preliminary Collection Letter dated August 25, 2015;

m) Final Notice Before Seizure dated September 9, 2015.

Based on the allegations in the Information, the accused are charged herein for violation of section 255 in relation to Section 256 of the 1997 NIRC, allegedly due to the failure of Robigie Corporation to pay its Value-Added Taxes (VAT) in the total amount of Php2,861,197.50 for taxable year 2011.

The foregoing VAT liabilities refer to alleged non-payment thereof by Robigie Corporation and that the accused Dolores M. Galicia and Grace G. Suckshupan are being sued in their capacity as President and Treasurer, respectively.

The Court will now determine probable cause for the issuance of the warrant of arrest.

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

> Section 6. When warrant of arrest may issue. - a) By the Regional Trial Court. – xxx, 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 xxx". (Italics ours)

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides, thus:

> "Section 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."

Based on the foregoing, probable cause to issue a warrant of arrest is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused.

The offense charged is the crime of failure to pay tax under Section 255 of the 1997 NIRC which has the following elements, to wit:

(a) That a corporate taxpayer is required under the 1997 NIRC, or by rules and regulations, to pay any tax, make a return, keep any record or supply 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.

(b) That the corporate taxpayer failed to pay the required tax, make a return or keep the required record or supply the correct and accurate information.

Section 253 (d) of the 1997 NIRC provides the persons to be held liable in case the crime is alleged to have been committed by a juridical person, thus:

> "Section 253. **General Provisions.**
>
> 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."

Upon a careful consideration of the supporting documents attached to the records of the case, the Court finds that there is no probable cause to issue a warrant of arrest for the following reasons:

(a) The amount of tax liabilities and the type of taxes indicated in the Information filed with this Court appear to be inconsistent with the Resolution[1] of Mr. Dennis Aguila, the Senior Assistant City Prosecutor dated June 13, 2017 which recommended the indictment of the President and Treasurer of Robigie Corporation for alleged non-payment of deficiency income tax, expanded withholding tax (EWT) in the amount of Php3,850,524.77 and VAT in the amount of Php2,861,197.57.

The Information *solely* reflects the alleged unpaid tax to be that of VAT in the amount of Php2,861,197.50 which is also inconsistent with the amount mentioned in the Referral Letter[2] signed by Mr. Arnel D. Guballa, the Regional Director of Revenue Region No. 6, paragraph 25 thereof is quoted below:

> "Section 25. xxx xxx xxx Robigie Corporation is required to pay, through respondents as its president and treasurer, its deficiency taxes in the total amount of

[1] Docket, pp. 8-10.
[2] Docket, pp. 13-14.

> *Php10,505,557.53,* inclusive of increments, covering taxable year 2011. However, despite receipt of the FAN and Formal Letter of Demand with Details of Discrepancies, it failed and refused to pay the said tax liabilities. Thus, a clear violation of Section 255 of the NIRC of 1997, as amended." (italics ours)

(b) The alleged non-payment of the VAT for taxable year 2011 could not be determined by the supporting documents attached to the Information. What was attached is the Annual Income Return[3] of Robigie Corporation for taxable year 2011. No VAT returns were submitted by the Prosecution to prove unpaid VAT especially in a case where the unpaid VAT was due to alleged "unsupported input taxes claimed *per return* in violation of Section 110 and 113 of the 1997 Tax Code."[4]

(c) There was no evidence to support that DOLORES M. GALICIA and GRACE SUCKSHUPAN, are the designated President and Treasurer, respectively of Robigie Corporation at the time the alleged crime was committed. The names Dolores M. Galicia and Grace Suckshupan were mentioned in the Information in their capacity as said officers of the Corporation yet no evidence was submitted to prove that these persons were still officers when the alleged crime was committed in 2015. The General Information Sheet (GIS) submitted by the prosecution and filed by Robigie Corporation with the SEC contains a list of the corporate officers as of the date of the Annual Meeting held on November 15, 2010.[5] The alleged crime was deemed to have been committed at the time the Final Notice and Demand for payment of the deficiency taxes was served upon the taxpayers sometime in 2015. The Supreme Court has ruled, thus:

> "Inasmuch as the final notice and demand for payment of the deficiency taxes was served to petitioners on July 3, 1968, it was 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 allotted period."[6] (italics ours)

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[3] Docket, pp.39-40.
[4] Formal Letter of Demand, Docket, page 28.
[5] GIS, Docket, pp. 31-38.
[6] Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals, G. R. Nos. L-48134-37, October 18, 1990.

It is quite possible that the two aforementioned persons are no longer officers of Robigie Corporation in 2015 when the Assessment Notices and Formal Letter of Demand were received by Robigie Corporation hence may not be held liable for corporate VAT liabilities of the latter. Although the deficiency VAT covered taxable year 2011, the alleged crime under Section 255 of the 1997 NIRC was deemed to have been committed only in 2015.

In view of the foregoing, this case is hereby **DISMISSED WITHOUT PREJUDICE** to the filing of an Amended Information for failure of the evidence on record to establish probable cause as provided in Section 6 (a) of Rule 112 of the Rules of Court and Rule 9 of the Revised Rules of the Court of Tax Appeals.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice