11-000316-0007

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-245

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RENNE B. SAMALA, RTS FARM NETWORK, INC.,
#1003 Turo, Bocaue, Bulacan,
Accused.

NOTICE OF RESOLUTION

To:

CITY PROSECUTOR HILDA A. FANTASTICO-IBUYAN
STATE PROSECUTOR ESTEBAN MOLON, JR.
Department of Justice
Office of the City Prosecutor
6th Floor, Bulwagan ng Katarungan
Poblacion II, Malinta
Valenzuela City

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 703, BIR National Office Buiding
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
Thru: General Services Division
National Bureau of Investigation
Building C and D, Filinvest Cyberzon
Bay City, Pasay City

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGen Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Bocaue Police Station
P. Burgos Street, Bocaue
3018 Bulacan

GREETINGS:

You are hereby notified by these presents that on **December 18, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 18, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

RENNE B. SAMALA, RTS FARM NETWORK, INC.,
#1003 Turo, Bocaue, Bulacan,
Accused.

CTA Crim. Case No. O-245

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

Promulgated:
DEC 18 2024; 9:00AM

x- -x

RESOLUTION

In a *Resolution* promulgated on May 29, 2012,[1] the Court's Second Division ordered that the instant case be archived so that it may not remain pending indefinitely, considering that the Warrant of Arrest dated October 5, 2011, has been returned unserved for the reason that "accused cannot be found at said given address despite diligent effort exerted."

Upon periodic review of archived cases, the Court finds that this case should be dismissed for lack of probable cause due to the prescription of the government's right to collect accused' deficiency taxes.

The *Information* dated September 14, 2011,[2] charges accused with violating "Section 49(b) (now Section 56[b]), Section 102(a) (now Section 108[8]), Sec. 57(B) and Sec. 79(A) of the National Internal Revenue Code [**NIRC**] of 1997, as amended," allegedly committed as follows:

> That on or about October 20, 2006 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, in his capacity as President of RTS FARM

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1 Docket, p. 44.
2 *Id.* at 4.

> NETWORK, INC., did then and there wilfully, unlawfully, and feloniously fail and refuse to pay the company's deficiency tax liabilities in the amounts of P1,708,773,02, P1,186,966.83, P72,774.13 and P32,202.36 representing deficiency income, VAT, EWT, and WT-Compensation taxes, all for the year 2004, despite finality of the assessment notice from the Bureau of Internal Revenue. [sic]
>
> CONTRARY TO LAW.

Although the provisions invoked are "Section 49(b) (now Section 56[b]), Section 102(a) (now Section 108[8]), Sec. 57(B) and Sec. 79(A) of the [NIRC] of 1997, as amended", the crime charged is actually under Section 255 of the NIRC of 1997, as amended - specifically *Failure to Pay Tax.* Section 255 reads as follows:

> 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) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. xxx

To sustain a conviction for failure to pay tax under Section 255, the prosecution must establish the following elements:

1. The accused was **required under the NIRC of 1997 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; and

2. The accused **failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

3. The accused ***willfully* failed 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.

The term "willful," as defined in the Ninth Edition of Black's Law Dictionary, means voluntary and intentional, though not necessarily malicious:

> The word "Wilful" or "Wilfully" when used in the definition of a crime, it has been said time and again, means **only intentionally or purposely as distinguished from accidentally or negligently** and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless **there is a bad purpose or evil intent**. Rollin M. Perkins & Ronald N. Boyce, Criminal Law 875-76 (3d ed. 1982).
>
> Almost all of the cases under [Bankruptcy Code § 523(a)(6)] deal with the definition of the two words "willful" and "malicious." Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them. David G. Epstein, et al., Bankruptcy § 7-30, at 531 (1993). [*Emphasis supplied*]

Accordingly, to constitute willful failure to pay tax, the prosecution must prove that there is failure to pay tax, **that there is a requirement to pay such tax**, and that the failure is willful.

A perusal of the records reveals that there is nothing on record that shows that the Final Assessment Notice (**FAN**) was received by the accused or by its authorized representative. The Registry Return Notice indicates that the mail matter was received by a certain Marivic P. Santos. The *Affidavit* of Eddielyn L. Gatdula, Legal Officer of the Bureau of Internal Revenue (**BIR**) and the Affidavit of Corazon I. Cruz, Mailing Clerk of the Administrative Division, BIR Revenue Region No. 5, do not indicate that Marivic P. Santos is an authorized representative of accused. Also, apart from the Registry Return Notice, no evidence was attached to the records to show the accused's actual receipt of the FAN.

It is axiomatic that mere submission of the Registry Return Notice does not automatically prove actual receipt of the FAN by accused. It must be clearly shown that the FAN was properly served to and received by accused or its duly authorized representative.

Absent any showing that the FAN was properly served to and received by accused or its duly authorized representative, the FAN issued against accused is void for failure to accord accused due process in the service thereof. Considering that the FAN is void, there is no FAN to speak of and accused is not obliged to pay the taxes assessed therein. The Court thus arrives at the conclusion that there is no basis to charge accused or any of its corporate officers for the crime of willful failure to pay tax despite finality of assessment.

Even if the FAN was properly served, the case is likewise dismissible against accused Samala as prosecution failed to establish that accused Samala was the President of RTS Farm Network, Inc. at the time of the commission of the crime.

To recall, the *Information* charges Renne B. Samala, in his capacity as President of RTS, of the crime of willful failure and refusal to pay RTS' deficiency tax liabilities despite finality of the FAN.

Section 253(d) of the NIRC of 1997, as amended, provides:

> SEC. 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.

Accordingly, a corporate officer may suffer the criminal penalty imposed on the corporation, provided that they are part of the list enumerated in Section 253(d) of the NIRC, to wit: president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

Here, there is nothing on record which would show that accused Samala was indeed the President of RTS at the time of the alleged commission of the crime. Hence, the Court finds no basis to find probable cause for issuance of warrant of arrest against accused Renne B. Samala.

WHEREFORE, premises considered, CTA Crim Case No. O-245 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED**.

The Alias Warrant of Arrest issued against **Renne B. Samala** is hereby **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice