REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JANET LIM NAPOLES,
Accused.

CTA CRIM. CASE NO. O-489
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUN 29 2015
2:57 p.m.

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RESOLUTION

The prosecution's **Compliance**, filed on June 4, 2015, submitting a certified true copy of the Letter of Approval of the Commissioner of Internal Revenue dated September 26, 2013, authorizing the filing of the Information against the accused, is **NOTED**.

On June 8, 2015, the prosecution filed a **Motion to Admit Attached First (1ST) Amended Information** praying that the attached first (1st) amended information be admitted as part of the records, and to replace the information currently filed against the accused.

The amendment of an Information is governed by Section 14, Rule 110 of The Revised Rules of Criminal Procedure, which provides that before the accused enters his plea, the Information may be amended, in form or in substance, without leave of court. If the amendment downgrades the nature of the offense charged or excludes any accused, the amendment must only be made upon motion by the prosecutor, with notice to the offended party and with leave of court.[1]

The 1st Amended Information, which replaced the Information filed on May 7, 2015, charges the accused JANET LIM NAPOLES for her alleged violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on or about April **2011**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in her annual income tax return, by then and there substantially under-declaring her income for taxable year **2010** which resulted in a basic deficiency income tax of One Million Nine Hundred Seventy Four Thousand Eight Hundred Thirty Eight Pesos and Fourteen Centavos (P1,974,838.14) for taxable year **2010**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."
>
> CONTRARY TO LAW.

Based on the foregoing, the prosecution amended the year the crime was allegedly committed, from **2010** it was changed to **2011**; while the taxable year was changed from **2009** to **2010**. It appearing that the current amendments neither downgrade the

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[1] **SEC. 14.** *Amendment or substitution.* – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

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nature of the offense charged nor exclude any accused, the Court, therefore, **GRANTS** the Motion to Admit Attached First (1ST) Amended Information. Accordingly, the 1st Amended Information is **ADMITTED**.

The Court shall now proceed to determine the existence of probable cause for the issuance of warrant of arrest against the accused pursuant to Section 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended. The said rule provides:

> 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 Chairperson 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.

The rule gives this Court three options upon the filing of the criminal information, to wit: (1) immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.

By analogy, in the case of *People vs. Dela Torre-Yadao*,[2] the Supreme Court explained that in applying the options under Section 6, Rule 112 of the Rules of Court[3], when warrant of arrest may issue (a) by the Regional Trial Court, "the court's first option under the above is for it to 'immediately dismiss the case if the evidence on record clearly fails to establish probable cause"[4].

"Probable cause to issue a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and

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[2] G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264, 287.
[3] Now Section 5, Rule 112 of The Revised Rules of Criminal Procedure
[4] *People vs. Dela Torre-Yadao*, G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264, 287.

prudent person to believe that an offense has been committed by the person sought to be arrested. It bears remembering that 'in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance.' Thus, the standard used for the issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him."[5]

The prosecution presented the following supporting documents for examination of the Court:

1. **Resolution** dated March 13, 2015 signed by the Assistant State Prosecutors Stewart Allan A. Mariano and Mark Roland S. Estepa, with recommending approval of Senior Assistant State Prosecutor Susan F. Dacanay, and approved by Prosecutor General Claro A. Arellano;[6]

2. **Investigation Data Form** dated September 26, 2013;[7]

3. **Joint Complaint-Affidavit** of Marites P. Arias, Nilda T. Se and Josephine D. Madera, dated September 26, 2013;[8] and

4. **Certification** dated September 23, 2013 issued by Revenue District Officer Florante R. Aninag;[9] and

5. **Annexes** to the Joint Complaint-Affidavit.[10]

Accused is being charged of a crime under Section 255 of the NIRC of 1997, as amended, for alleged willful failure to supply correct and accurate information by substantially under-declaring her income for taxable year 2010. At this instance, **it presupposes that a return was filed, and accused supplied incorrect and inaccurate information**.

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[5] *Chester de Joya vs. Judge Placido C. Marquez, et al.*, G.R. No. 162416, January 31, 2006, 481 SCRA 376.
[6] Docket, pp. 9-26.
[7] Docket, p. 27.
[8] Docket, pp. 28-43.
[9] Docket, p. 47.
[10] Docket, pp. 44-233.

A perusal of the supporting documents/annexes reveals that the accused did not file her Income Tax Return (ITR) for taxable year 2010. The Certification[11] dated September 23, 2013 issued by Revenue District Officer Florante R. Aninag of RDO No. 43A, East Pasig City, established that the accused failed to file her Annual ITR for taxable year 2010, it says:

> "This is to certify that records of this office shows that **JANET LIM NAPOLES** **(TIN: 174-764-580-000)** of 2502 Discovery Center No. 25ADB Ave. Ortigas Pasig City **has NO Annual Income Tax Returns (1701) filed** for the **Taxable Years 2010, 2011 and 2012**. xxx"

It is apparent from the foregoing that the crime charged against the accused is inconsistent with the evidence attached. It was clearly shown that she did not file her ITR for taxable year 2010, consequently, she cannot be charged with willful failure to supply correct and accurate information.

After considering the allegations in the 1st Amended Information and personally examining and evaluating the above-mentioned supporting documents, the Court finds that the evidence on record clearly failed to establish a *prima facie* case against the accused for willful failure to supply correct and accurate information. Hence, the evidence adduced does not support the finding of probable cause for the issuance of a warrant of arrest.

"While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause."[12]

WHEREFORE, in view of the foregoing, and notwithstanding the admission of the 1st Amended Information, the instant case is **DISMISSED WITHOUT PREJUDICE**.

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[11] Docket, p. 216.

[12] *Alfredo C. Mendoza vs. People of the Philippines and Juno Cars, Inc.,* G.R. No. 197293, April 21, 2014, 722 SCRA 647, 649.

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice