REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RAYMUND D. FUTAD, AND ALEXANDER A. ANGOLUAN,
(c/o Room 220, 156 CK Sy Diamond Bldg., Libertad St., Barangay 068, Pasay City),
Accused.

CTA CRIM. CASE NO. O-1025
For: Violation of Section 255 in rel. to Sections 253 (d) and 256 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

MAR 16 2023
9:40 a.m.

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RESOLUTION

Records show that, on February 1, 2023, the prosecution filed the Information dated January 25, 2023 against herein accused **Raymund D. Futad** and **Alexander A. Angoluan** for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That in the year 2015 or for sometime subsequent thereto, in the City of Makati The Philippines, a place within the jurisdiction of this Honorable Court, accused, being then the President and Treasurer, respectively, of Vivid Construction, Inc., with office address located at Room 220, 156 CK Sy Diamond Bldg., Libertad St., Barangay 068, Pasay City, did then and there willfully, unlawfully and feloniously fail, refuse and neglect to pay deficiency Income tax in the amount of Php111,056,331.88; Expanded Withholding Tax in the amount of Php1,703,229.10; and Withholding Tax on Compensation in the amount of Php111,525.39 or in the total amount of Php112,871,086.37, inclusive of penalties, interests and surcharges, due from said corporation for the taxable year 2015,

under BIR Formal Assessment Notice and Details of Discrepancies both dated November 28, 2018, despite notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon them to comply, in violation of the aforesaid provisions of law, to the damage and prejudice of the Philippine government in the aforesaid amount.

CONTRARY TO LAW."

Pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[1] the Court shall determine the existence or non-existence of probable cause for the issuance of warrant of arrest.

The prosecution attached pertinent supporting documents to the Information for the examination of the Court, such as: 1) Investigation Data Form; 2) Referral to File Criminal and Civil Charges against Vivid Construction, Inc,, Mr. Raymund D. Futad-President, and Mr. Alexander A. Angoluan-Treasurer; and 3) Joint Complaint-Affidavit.

The Court observed that the General Information Sheet of Vivid Construction, Inc.; Subpoena issued to Atty. Joana Q. Bilongilot dated September 7, 2022; Subpoena issued to Raymund D. Futad and Alexander A. Angoluan dated September 7, 2022; Minutes of Hearings dated September 27, 2022 and October 4, 2022; Memorandum dated December 1, 2022 issued by the Office of the City Prosecutor of Makati; Motion to Withdraw Information filed by the same before the Regional Trial Court (RTC), Branch 66 of Makati City; Information dated October 19, 2022 filed before the Branch 66, RTC of Makati City as well as the Order dated December 14, 2022 issued by the said Court; and Resolution issued by the City Prosecution Office of Makati recommending/approving the filing of the Information are mere photocopies.

Moreover, the crimes charged in this case pertains to violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, which states:

"SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and*

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[1] 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.

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 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.

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 receiving seal or stamp of receipt of 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) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

SECTION 253. *General Provisions.* —

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"(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."

"SECTION 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) but not more than One hundred thousand pesos (P100,000)."

The term 'person' means an individual, a trust, estate or corporation.[2]

In this case, the person required to pay the alleged deficiency taxes for taxable year 2015, who allegedly committed the violation under the NIRC, is the corporation, *i.e.*, Vivid Construction, Inc.

After a careful perusal of the Information, the then President and Treasurer, respectively, of Vivid Construction, Inc. were charged as accused; however, Vivid Construction, Inc. was not charged in the Information.

Considering that the corporation was not charged as an accused, there is no leg to stand to accuse Raymund D. Futad and Alexander A. Angoluan, being then the President and Treasurer, respectively, of Vivid Construction, Inc. in this case.

WHEREFORE, for failure of the plaintiff to include Vivid Construction, Inc. as accused, the case is **DISMISSED** without prejudice.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[2] Section 22(A) of the 1997 NIRC, as amended.