REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff,

-versus-

CTA CRIM. CASE NO. - O-483

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

JAIME G. NAPOLES,
Accused.

Promulgated:

JUL 13 2015
10:17 a.m.

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RESOLUTION

On May 21, 2015, the Court issued a Resolution ordering the prosecution to make the appropriate action to clarify the allegations in the Information pertaining to the jurisdictional amount in the instant case, within 10 days from notice.

In compliance thereon, on June 5, 2015, the prosecution filed a Motion to Admit Attached First (1st) Amended Information.

On June 10, 2015, accused filed an "Urgent Motion to Defer Proceedings" praying that the proceedings in this case be held in abeyance until accused's Motion for Reconsideration shall have been passed and resolved by the Department of Justice.

The 1st Amended Information which replaced the Information filed on May 7, 2015, charges accused Jaime G. Napoles for alleged violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on or about April **2010**, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named

accused, an individual and a Filipino citizen in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, willfully, unlawfully and feloniously **fail to supply correct and accurate information in his annual income tax return, by then and there substantially under-declaring his income for taxable year 2009 which resulted in a basic deficiency income tax of Two Million Eight Hundred Ninety Two Thousand Three Hundred Twelve Pesos and Forty Nine Centavos (P2,892,312.49) for taxable year 2009**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

The prosecution amended the year the crime was allegedly committed, from 2009 it was changed to 2010, while the taxable year was changed to 2009 from 2008. Considering that the amendments neither downgrade the offense charged nor exclude any accused, this Court hereby **GRANTS** the Motion to Admit Attached First (1st) Amended Information. Accordingly, the 1st Amended Information is **ADMITTED**.

The prosecution presented the following supporting documents for the examination of the Court in the determination of probable cause:

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;
2. Investigation Data Form dated September 26, 2013;
3. Joint Complaint Affidavit of Marites P. Arias, Nilda T. Se and Josephine D. Madera, dated September 26, 2013;
4. Annexes to the Joint Complaint-Affidavit;
5. Certification for Janet Lim Napoles (Annexes "C" and "C-10") dated September 10 and 23, 2013; and
6. 2008 and 2009 Income Tax Returns of Janet Lim Napoles

The Court notes that the prosecution failed to submit before the Court the original copy or certified true copy of the Certification or Referral Letter issued by the Commissioner of Internal Revenue for the filing of the criminal complaint against accused Jaime G. Napoles, the accused's Counter-Affidavit and the Minutes of the Preliminary Investigation.

Section 2, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended provides:

> "All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. **In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing.** In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing." *(emphasis supplied)*

Thus, it is mandatory that the Certification or Referral Letter issued by the Commissioner of Internal Revenue for the filing of the criminal complaint against accused should attached be to the Information.

Accused is charged of violation of Section 255 of the NIRC of 1997, as amended, for alleged willful failure to supply correct and accurate information in his annual income tax return for taxable year 2009. There is a presumption that an Income Tax Return (ITR) was filed and accused supplied incorrect information in the ITR.

A scrutiny of the supporting documents appearing in the record of the case, particularly the Resolution of the Department of Justice shows that there are inconsistencies regarding accused's ITR for taxable year 2009. The pertinent portions of the said Resolution states:

> "Comparison of the respective incomes of respondent-spouses vis-à-vis their expenses for taxable years 2004, 2006, 2008, 2009, 2010, 2011 and 2012 indicates that their expenditures have exceeded their declared income per ITRs by the use of Expenditure Method.
>
> BIR maintains that in the case at bar, it has considered the sources of funds in the acquisition of properties. The above mentioned funds represent unreported income, They take all the amounts of income declared by respondents in the ITRs that they filed from the time they registered with the BIR to establish the amount of accumulated disposable income as of December 31, 2003 amounting to P526,591.70 which is available to them for taxable year 2004.
>
> Thus the difference between the reported or declared total gross income for taxable years 2004, 2006, 2008, 2009, 2010, 2011, 2012 and per ITRs filed by respondent Janet Napoles for taxable years 2004, 2006, 2008 and 2009 **and ITR filed by respondent Jaime Napoles for taxable year 2009 vis-à-vis the expenditure of respondents for years 2004, 2006, 2008, 2009,**

2010, 2011 and 2012, constitutes substantial underdeclaration of more than thirty (30%) percent. Such substantial underdeclaration is considered as prima facie evidence of a fraudulent return under Section 248(B) of the NIRC of 1997.

Respondent spouses Janet and Jaime Napoles have incurred tax liability for taxable years 2004, 2006, 2008, 2009, 2010, 2011 and 2012 in the amount of forty four million seven hundred eleven thousand one hundred forty seven pesos and 48/100 (P44,711,147.48) and sixteen million four hundred seventy thousand four hundred two pesos and 72/100 (P16,470,402.72), respectively, inclusive of increments.

Respondent Janet Napoles is required by law to file a return for the taxable years 1999 to 2012. However, she failed to file her ITRs for taxable years 2010 to 2012. Thus, she violated Section 255 of the NIRC which requires her to file ITRs.

Respondent Jaime Napoles, on the other hand, failed to file his ITR for taxable year 2009. As a result, he likewise violated Section 255 of the said law.

Respondent spouses are required by law to supply correct and accurate information as to income and revenues earned in their ITRs, which, however, they willfully failed to do. They made substantial underdeclarations in their ITRs for taxable years 2004, 2006 and 2008. For 2009, they made a declaration in their ITR that they had "No operation." As a result, they failed to pay the correct tax.

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Moreover, respondent Janet L. Lim failed to file her ITRs for taxable years 2010, 2011 and 2012 in violation of Section 255 of the NIRC while respondent Jaime G. Napoles failed to do so for taxable year 2009." *(emphasis supplied)*

Hence, the crime charged against the accused is inconsistent with the Resolution of the Department of Justice and the documents attached to the record of the instant case. What was attached to the record of this case are the 2008 and 2009 ITRs of Janet Lim Napoles. Accused cannot be charged with willful failure to supply correct and accurate information since it was stated in the Resolution that accused did not file his ITR for taxable year 2009. Accordingly, this Court finds that the evidence on record failed to establish a *prima facie* case against the accused for willful failure to supply correct and accurate information in the ITR. The evidence presented does not support the finding of probable cause that the crime charged has been committed.

"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."[1]

WHEREFORE, notwithstanding the admission of the 1st Amended Information, the instant case is hereby **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[1] *Alfredo c. Mendoza vs. People of the Philippines and Juno Cars, Inc.* G.R. No. 197293, April 21, 2014.