REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

– *versus* –

CROSS COUNTRY OIL & PETROLEUM CORPORATION, ARTURO M. ZAPATA and JACOB VALERIANO, JR.
Rm. 3105 31st Floor, World Trade Exchange Bldg., 215 Juan Luna St., Binondo, Manila
(AT LARGE)
Accused.

CTA CRIM. CASE NO. O-631
(NPS Docket No. XVI-INV-15H-00321)
For: Violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 NIRC, as amended.

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

Promulgated:
MAR 1 3 2018
3:44 p.m.

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RESOLUTION

For resolution are the following incidents:

1. The Demurrer to Evidence (with Leave of the Honorable Court) (the "Demurrer to Evidence") filed by the accused on December 22, 2017; and

2. Motion with Leave of Court to Admit Attached Comment/Opposition to Demurrer to Evidence ("Motion") filed by the prosecution on February 6, 2018.

On December 5, 2017, the Court issued a Resolution ruling on the Formal Offer of Evidence filed by the prosecution.

On December 22, 2017, the accused filed the Demurrer to Evidence.

On January 12, 2018, the Court issued a Resolution ordering the prosecution to file its comment or opposition to the Demurrer to Evidence.

On February 6, 2018, the prosecution filed the present Motion, attaching therewith its Comment/Opposition to Demurrer to Evidence.

In the Motion, the prosecution alleges that the draft of the prosecution's comment/opposition was not finalized on time as the file was corrupted with viruses and the handling lawyer had to retype the same. The prosecution likewise stated that the comment/opposition was only finalized on February 2, 2018 due to the handling lawyer's heavy workload and heavy pressure of work consisting of appearances in courts and preparation of equally important pleadings.

In *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*,[1] the Supreme Court ruled that the Court is not governed strictly by technical rules of evidence, its paramount consideration is the ascertainment of truth. Thus, in the interest of substantial justice, the Court hereby **GRANTS** the Motion with Leave of Court to Admit Attached Comment/Opposition to Demurrer to Evidence. Accordingly, the Comment/Opposition to Demurrer to Evidence (the "Comment/Opposition") is **ADMITTED**.

Meanwhile, the Court notes that the accused failed to move for leave of court to file the Demurrer to Evidence. While it filed a pleading entitled "Demurrer to Evidence (with Leave of the Honorable Court)," no motion for leave to file the demurrer to evidence was made in accordance with the *Section 23, Rule 119 of the Revised Rules of Court*. Hence, the Court will treat the present Demurrer to Evidence as one filed without leave of court.

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[1] G.R. No. 141973, June 28, 2005, 461 SCRA 369.

The Court shall now rule on the validity of the Demurrer to Evidence.

The *Revised Rules of Court* provides the procedure and guidelines for demurrers to evidence. Specifically, *Section 23, Rule 119* thereof states:

> Sec. 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with our without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
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> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

In *Ong v. People*,[2] the Supreme Court discussed the nature of a demurrer to evidence in this wise:

> A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his

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[2] G.R. No. 140904, October 9, 2000, 342 SCRA 372.

> adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

On the other hand, in *People v. Sandiganbayan*,[3] the Supreme Court laid down the basis and effect of a court's resolution on a demurrer to evidence, thus:

> Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. Significantly, once the court grants the demurrer, such order amounts to an acquittal; and any further prosecution of the accused would violate the constitutional proscription on double jeopardy. This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his own motion bars a plea of double jeopardy.

Applying the foregoing principles to the case at bar, the Court is required to ascertain whether the evidence presented by the prosecution is competent or sufficient to support a verdict of guilt. In this regard, a review of the pieces of evidence presented by the prosecution shows that the prosecution failed to present competent or sufficient evidence to support a verdict of guilt. Specifically, the Bureau of Internal Revenue's ("BIR") failure to validly serve the Letter of Authority ("LOA") for the period covered in the assessment within thirty (30) days from the LOA's issuance makes the same void. Consequently, the assessment issued pursuant to said LOA is likewise void.

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[3] G.R. No. 140633, February 4, 2002, 376 SCRA 74.

In the Demurrer to Evidence, the accused argue that the prosecution was bereft of any authority to perform and undertake any audit on the books of CCOPC, making its actions null and void. According to the accused, the LOA was served on accused Zapata forty-two (42) days from its issuance, contrary to the thirty (30)-day requirement under existing tax rules and without the LOA being revalidated. The accused also argue that the prosecution violated the right of accused to due process for failure to serve the Notice of Informal Conference ("NIC"), the Preliminary Assessment Notice ("PAN"), and the Final Assessment Notice and Final Letter of Demand (the "FAN"). The accused posit that the prosecution failed to present any evidence that the NIC, the PAN, and the FAN were served on and received by CCOPC considering no registry receipts were presented to show that service of the notices was done through registered mail; no witness testified that the accused received the notices; and no registry return cards or any other proof were presented to show the notices were actually mailed, served on, and received by the accused. Finally, the accused argue that the prosecution failed to present evidence that the accused willfully, intentionally, deliberately, and voluntarily refused to pay the deficiency tax.

On the other hand, the prosecution counters in its Comment/Opposition that the LOAs issued against accused were validly issued and served. In addition, the prosecution counters that CCOPC cannot validly claim that its right to due process was violated for failure to serve the NIC, the PAN, and the FAN considering that the prosecution exerted all efforts to have the same served on CCOPC. According to the prosecution, CCOPC did not notify the BIR of any transfer of CCOPC's registered address.

The Court holds that service of the LOA within the prescribed period is crucial to the validity of the assessment subsequently issued by the BIR. Without a validly issued and served LOA, the audit conducted by the BIR and the assessment issued pursuant thereto has no basis. Consequently, any alleged violation of *Section 255 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[4] will not have support in law and in fact as no failure to pay or withhold and remit taxes withheld has arisen.

Revenue Audit Memorandum Order ("RAMO") No. 01-00[5] clearly

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[4] *Republic Act No. 8424,* as amended (1997).
[5] March 17, 2000.

provides that the LOA must be served on the taxpayer within thirty (30) days from the date of issuance; otherwise the LOA becomes null and void unless revalidated. The thirty (30)-day period from issuance is mandatory in the absence of revalidation. In fact, *RAMO No. 01-00* allows the taxpayer to refuse service of the LOA if the same is made beyond the thirty (30)-day period. The relevant provision reads:

> 2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[6], the Supreme Court highlighted the importance of a LOA when the BIR conducts examinations of a taxpayer's books, thus:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
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> xxx xxx xxx
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> Based on the afore-quoted provision, it is clear that <u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken</u>. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless

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[6] G.R. No. 222743, April 5, 2017.

> undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[7]

In the present case, the BIR issued two (2) LOAs. The first LOA[8] was for the period January to June 2010 and was validly served on CCOPC within thirty (30) days from its issuance (*i.e.*, the first LOA was issued on October 20, 2010 and received by accused Zapata on October 26, 2010). On the other hand, the second LOA[9] – the basis for the subsequently issued assessment – was for CY 2010 and was served on CCOPC after the thirty (30)-day period from issuance had lapsed (*i.e.*, the second LOA was issued on July 22, 2011, but received by accused Zapata only on September 2, 2011 or forty-two [42] days from issuance of the second LOA).

Having been issued outside the thirty (30)-day period, the second LOA in the present case is void. Consequently, the audit and examination conducted by the BIR against accused for CY 2010, which resulted in the assessment issued in the present case, was made without authority. Considering the assessment is not valid, herein accused cannot be said to have failed to pay or withhold and remit payment withheld taxes – much more to have done so willfully – as required under *Section 255 of the 1997 NIRC*, which provides:

> **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 (Php10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
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> xxx xxx xxx

[7] Underscoring ours.
[8] *Records, CTA Crim. Case No. O-631, Exhibit "P-2," Letter of Authority*, p. 375.
[9] *Records, Exhibit "P-9," Letter of Authority*, p. 381.

All foretold, the Court holds that the prosecution was not able to establish with competent or sufficient evidence the guilt of accused for willful failure to pay any tax or withhold or remit taxes withheld under *Section 255 of the 1997 NIRC.*

In view of the foregoing, the Demurrer to Evidence (with Leave of the Honorable Court) filed by accused is hereby **GRANTED.** Accordingly, CTA Crim. Case No. O-631 is **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice