REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EMMA REDO QUITONG
No. 41 Ortigas Avenue
Pasig City
(At large),
Accused.

CTA CRIM. CASE NO. O-709

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 03 2019 : 4:10 p-

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RESOLUTION

The Court hereby **NOTES** the "Compliance with Manifestation" filed by the Assistant State Prosecutor Susan T. Villanueva on May 17, 2019, pursuant the Court's Resolution dated April 8, 2019.

In an Information filed before this Court on March 18, 2019, the accused, **Emma Redo Quitong** is being charged for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion thereof reads as follows:

> "That on or about May 2015, in Quezon City, and within the jurisdiction of this Honorable Court, accused **EMMA REDO QUITONG**, required by law to file income tax return and to pay the corresponding tax, did then and there wil[l]fully, unlawfully and feloniously **fail to pay deficiency income tax** for taxable year 2007 in the amount of Five Million Five Hundred Forty Seven Thousand Six Hundred Eighty Seven Pesos and Forty Four Centavos (P5,547,687.44), exclusive of surcharges and interests, despite receipt of final assessment notice, including prior and post notices

> and final demands to pay the last being in the form of demand before suit issued on May 8, 2015, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

Attached to the Information are the following supporting documents, namely:

1. Original Copy of the Resolution dated August 7, 2018 signed by Assistant State Prosecutor Susan T. Villanueva, with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Officer-in-Charge Richard Anthony D. Fadullon;[1]
2. Certified Xerox Copy of the National Prosecution Service Investigation Data Form;[2]
3. Certified Xerox Copy of the Letter addressed to the Secretary of Justice Leila De Lima, from Commissioner of Internal Revenue Kim S. Jacinto-Henares;[3]
4. Certified Xerox Copy of the Joint Complaint-Affidavit and the attached Annexes "A" to "U".[4]

The Court is now tasked to evaluate the Information and the supporting documents filed by the Assistant State Prosecutor Susan T. Villanueva, including the documents attached in its Compliance, to determine the existence of probable cause for the issuance of a warrant of arrest against the accused, pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.[5]

The test whether a warrant of arrest should be issued against an accused is clarified in *Chester De Joya vs. Judge Placido C. Marquez*,[6] to wit:

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

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[1] CTA Docket, pp. 11-15.
[2] CTA Docket, p. 16.
[3] CTA Docket, pp. 17-18.
[4] CTA Docket, pp. 19-54.
[5] 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 Chairman 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.
[6] G.R. No. 162416, January 31, 2006.

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."

After a careful consideration of the allegations in the Information and personally evaluating the Resolution of the Department of Justice, and its supporting documents attached to the record, this Court finds **no probable cause** to issue a warrant of arrest against the accused **Emma Redo Quitong.**

A perusal of the Assessment Notice ("AN")[7] Nos. F-043B-LNTF-07-IT-021 and F-043B-LNTF-07-VT-021, attached to the Letter entitled "Final Assessment Notice",[8] issued against accused reveals that said documents failed to demand payment of the taxes due within a specific period.

Although the said Letter provides that "the interest and the total amount due will have to be adjusted if paid beyond (August 31, 2011)",[9] the same concludes that:

"In view thereof, it is requested that you pay the above deficiency taxes, through the duly authorized agent bank (ABB) in which you are enrolled, **<u>within the time shown in the accompanying assessment notice</u>**. xxx " (Emphases supplied)

More importantly, **the <u>spaces for the due dates</u> in the AN attached to the Letter were conspicuously left blank**.

Since there was no assessment notice which properly indicated the due date when the deficiency taxes must be paid, no proper demand thereof within a specific period was made.

In ***Commissioner of Internal Revenue vs. Fitness By Design, Inc.,***[10] the Supreme Court emphasized that a FAN without a definite due date for payment is not valid because it negates the demand for payment. Pertinent parts of the Supreme Court's ruling in ***Fitness By Design*** are quoted hereunder:

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[7] Annexes "G-1" and "G-2", CTA Docket, pp. 76-77.
[8] Annex "G", CTA Docket, pp. 73-74.
[9] CTA Docket, p. 74.
[10] G.R. No. 215947, November 9, 2016.

> **"The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx xxx
>
> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay."

In other words, a FAN must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. Absent such demand, as in this case, the FAN is fatally infirm. Being a void assessment, the FAN bears no fruit[11] and must be slain at sight.

In fine, without a valid assessment, the accused may not be held liable for failure to pay the purported deficiency income tax.

WHEREFORE, in light of the foregoing, the case against accused **Emma Redo Quitong** is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[11] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice