REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ELENCE MARINE and INDUSTRIAL CORPORATION CRISIANO B. ENAD LOIDA I. ENAD,
Unit 1 Don Bosco Compound, Road 10 Magsaysay Brgy. 116 Zone 009 Tondo Manila 1013,
Accused.

CTA Crim. Case No. O-1023
(XV-07-INV-22L-04872)
For: Violation of Section 255 in relation to Section 53(d) and 256, RA 8424

Members:

DEL ROSARIO, ***PJ, Chairperson,***
MANAHAN, and
REYES-FAJARDO ***JJ.***

Promulgated:

APR 19 2023 9:13AM

x- -x

RESOLUTION

In the Resolution dated February 9, 2023, the Court directed the prosecution to amend the Information and submit proof of actual receipt of the Assessment Notices and Formal Letter of Demand (FLD) with Details of Discrepancies.

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals states:

> 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.** (Emphasis supplied)

The Records Verification dated March 2, 2023 states that the prosecution failed to amend the Information and submit proof of actual receipt of the Assessment Notices and FLD.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On January 27, 2023, an Information was filed against accused Elence Marine and Industrial Corporation, Crisiano B. Enad and Loida I. Enad indicting them of 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 of which states:

> That on or about September 24, 2020, in the City of Manila, Philippines, the said accused, being the Chairman/President and Treasurer of ELENCE MARINE and INDUSTRIAL CORPORATION, did then and there willfully and unlawfully fails, refuses and neglects to pay their income tax deficiency in the amount of P1,902,038.03 for the year 2017 under Assessment Notice Number 29-17-00916-2020-103 (IT), despite notice and service of said assessment and without formally protesting against or appealing the same, and repeated demands made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P1,902,038.03.
>
> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated January 4, 2023 issued by Senior Assistant City Prosecutor Cesar Ramil S. Margate, recommending that accused Elence Marine and Industrial Corporation, Crisiano B. Enad and Loida I. Enad be charged for violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended;

2. A letter dated December 12, 2022 of Regional Director Albino M. Galanza to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Elence Marine and Industrial Corporation, Crisiano B. Enad and Loida I. Enad; and

3. Complaint-Affidavit (CA) of Imelda O. Cregencia and Aileen R. Sarreal executed on December 12, 2022 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Annual Income Tax Return;[2]
c. Letter of Authority dated October 3, 2018;[3]
d. Checklist of Requirements;[4]
e. First Notice dated October 29, 2019;[5]
f. Second & Final Notice for Presentation of Records dated January 7, 2019;[6]
g. Record of Registered Matters Received and Delivered at Manila;[7]
h. Recommendation for the Issuance of Subpoena Duces Tecum dated June 10, 2019;[8]
i. Subpoena Duces Tecum;[9]
j. Affidavit of Service of Subpoena Duces Tecum;[10]
k. Notice for Informal Conference dated January 21, 2020;[11]
l. Preliminary Assessment Notice dated June 29, 2020;[12]
m. Report on Personal/Substituted Service;[13]
n. Protest Against PAN dated July 23, 2020;[14]
o. Formal Letter of Demand dated August 25, 2020;[15]
p. Final Assessment Notices dated August 25, 2020;[16]
q. Memorandum for the Revenue District Officer dated September 14, 2020;[17]
r. Report on Service by Mail/Courier;[18]

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[1] Annexes "A," CA.
[2] Annex "B," CA.
[3] Annex "C," CA.
[4] Annex "D," CA.
[5] Annex "E," CA.
[6] Annex "F," CA.
[7] Annex "F-1," CA.
[8] Annex "G," CA.
[9] Annex "H," CA.
[10] Annex "I," CA.
[11] Annex "J," CA.
[12] Annex "K," CA.
[13] Annex "K-1," CA.
[14] Annex "K-2," CA.
[15] Annex "L," CA.
[16] Annexes "M" to "M-5," CA.
[17] Annex "N," CA.

s. Warrants of Distraint and/or Levy;[19]
t. Warrants of Garnishment dated February 18, 2021;[20]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[21] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the prosecution claimed that the FLD and Assessment Notices were sent to accused through registered mail on September 14, 2020. However, the records of the case will show that there was no evidence that the FLD and Assessment Notices both dated August 25, 2020 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

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[18] Annexes "N-1" to "N-4," CA.
[19] Annex "O," CA.
[20] Annexes "P" to "P-17," CA.
[21] G.R. Nos. 48134-37, October 18, 1990.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice