REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

DOLORES D. BIBIS,
No. 780 Josefina Street,
Sampaloc, Manila
Accused.

CTA CRIM. CASE No. O- 072
(I.S. No. 04-K-25885)

For: Violation of Sec. 255 In relation to Section 253 (d) and 256, Tax Code of 1997, as amended by RA 8424

Members:

Acosta, Chairman,
Bautista, and
Casanova, *JJ.*

Promulgated:

JAN 18 2008, 4:00PM

x - x

RESOLUTION

Dolores D. Bibis is charged before this Court with the violation of **Sec. 255 in relation to Section 253 (d), and 256 of the National Internal Revenue Code of 1997, as amended by RA 8424**, in an Information alleging the following:

> "That on or about April 11, 2001, prior or subsequent thereto, in the City of Manila, Philippines, the said accused, being then the President and responsible officer of Doris Plumbing & Construction, a duly registered business entity with principal place and business at 780 Josefina Street, Sampaloc, this City, having filed their internal revenue tax for the year 1997, and after an examination and audit of the same, it has been found that there is due and collectible from said Dolores D. Bibis the amounts of

P566,661.65 as deficiency income tax, P1,330,738.23 as value added tax, and P36,000.00 as compromise penalty did then and there willfully and unlawfully fail, refuse or neglect to pay said taxes and without formally protesting against or appealing the same, despite due assessment notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P1,933,399.80, Philippine Currency.

Contrary to law."

Attached to the Information are:

(1) April 8, 2005 Resolution of Assistant City Prosecutor, Venus D. Marzan, with recommending approval of 2nd Assistant City Prosecutor, Antonio M. Israel, recommending the filing of an Information against one DOLORES BIHIS;

(2) Letter dated October 28, 2004, signed by Alfredo V. Misajon, Regional Director of the Bureau of Internal Revenue (BIR), recommending the immediate prosecution of herein accused;

(3) October 28, 2004 Affidavit executed by Jocelyn P. Balinsat, Atty. II assigned at the Legal Division of the Bureau of Internal Revenue, with the following attachments:

Annex "A" certified true photocopy of Assessment Notice No. 32-97 dated April 11, 2001 for deficiency income tax in the amount of P566,661,65 inclusive of interest up to April 11, 2001;

Annex "B" certified true photocopy of Assessment Notice No. 32-97 dated April 11, 2001 for deficiency Value Added Tax in the amount of P1,330,738.23 inclusive of interest up to April 11, 2001;

Two documents both marked as Annex "C", assessing compromise penalties, the first, in the amount of P16,000.00 and the second, in the amount of P20,000.00.

13

The Court is now tasked to evaluate the Information, as well as, the supporting documents/evidence filed by the State Prosecutor to determine if there is probable cause to go on with the prosecution of the case.

Section 6(a) Rule 112 of the Rules of Court provides that:

> "**Sec. 6. When warrant of arrest may issue**. – (a) By the Regional Trial Court.- Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from filing of the complaint or information."

Rule 9 of the Revised Rules of the Court of Tax Appeals likewise reads:

> 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.

Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused.[1] And once the Information is filed, the determination of the presence or absence of probable cause for the issuance of a warrant of arrest against the

[1] *Allado vs. Diokno, 232 SCRA 192*

14

accused, or for the withdrawal of the Information, or for the dismissal of the case, is addressed to the sound discretion of the Court.[2]

In this case, the Information charges DOLORES D. BIBIS as the President and responsible officer Doris Plumbing & Construction for violation of Section 255 of the NIRC brought about by the company's alleged willful failure and refusal to pay taxes for the year 2001, to the damage and prejudice of the Government in the total amount of P1,933,399.80.

After a judicious review of the allegations and documents attached to the Information, the Court finds that the evidence on record clearly failed to establish probable cause.

Note should be taken of the fact that what the National Internal Revenue Code penalizes under Section 255 is the **"willful failure to pay tax."** In other words, what the law makes criminal is the willful intent of non-payment of taxes. Thus, non-payment *per se,* does not warrant the institution of a criminal case against a taxpayer.

The allegations in the October 28, 2004 letter of Alfredo V. Misajon to the City Prosecutor that "despite several demands made" and the "service of Warrant of Distraint and/or Levy" the accused failed and refused to pay the assessed deficiency taxes are not sufficient to show that DOLORES BIBIS probably committed to crime charged. First, the Assessment Notices attached to the Information did not show whether the same was actually sent to and received by the accused. Absent proof of receipt, these assessments could not have attained finality, and in effect no willful failure to pay tax. Secondly, aside from Misajon's claim, no evidence was also presented as to the supposed Warrant of Distraint and/or Levy served upon the accused.

---

[2] *Sarigumba, et. al. vs. Sandiganbayan, 451 SCRA 533*

15

Moreover, while the Assessment Notices, as well as the correspondence from the Bureau of Internal Revenue show that it is one DOLORES D. **BIHIS** of 1770-1774 España Blvd., Sampaloc Manila who was assessed for deficiency taxes and whose case was recommended for prosecution, the Information as it reads charges DOLORES D. **BIBIS** of No. 780 Josefina Street, Sampaloc, Manila. No proof was also presented as to her being the Owner/Proprietor of Doris Plumbing & Construction, the company liable for the alleged deficiency taxes.

Accordingly, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause, as provided for in Section 6(a) Rule 112 of the Rules of Court and Rule 9 of the Revised Rules of the Court of Tax Appeals.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

16