REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

HEAVENLY URBAN CHEF, INC.
Lot 8 Bagsakan Rd corner Avocado Street FTI Complex, Taguig City

JEAN PAUL MICHAEL M. ESCUDERO
(Lot 8 Bagsakan Rd corner Avocado Street FTI Complex, Taguig City, and/or

8-C Sunblest Compound, Km 23 West Service Road Cupang, Muntinlupa City, and/or

330 Batangas South, Ayala Alabang Village Muntinlupa City)

MA. EVELYN M. ESCUDERO
(Lot 8 Bagsakan Rd corner Avocado Street FTI Complex, Taguig City and/or

120-IV B. Gonzales St., Xavierville Subdivision Quezon City)

CTA Crim. Case No. O-1073
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

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SALVADOR U. ESCUDERO III,
(Lot 8 Bagsakan Rd corner Avocado Street FTI Complex, Taguig City, and/or

14 Gonzales St., Xavierville Subdivision Quezon City, and/or

18 Lobelia, Pamplona Tres, Las Piñas City)
(All-At-Large)

Accused.

Promulgated:

OCT 04 2023; 1:10PM

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RESOLUTION

On August 10, 2023, an Information was filed against the accused **Heavenly Urban Chef, Inc.**, its President, **Jean Paul Michael M. Escudero**, its Vice-President, **Ma. Evelyn M. Escudero**, and its Treasurer, **Salvador U. Escudero III**, for violating 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 May 26, 2022, in Taguig City, and within the jurisdiction of this Honorable Court, accused Heavenly Urban Chef, Inc., a registered taxpayer, with obligation under the law to pay improperly accumulated earnings tax, through its co-accused corporate officers, namely: (1) Jean Paul Michael M. Escudero, its president; (2) Ma. Evelyn M. Escudero, its vice-president; and (3) Salvador U. Escudero III, its treasurer, did then and there, willfully, unlawfully, and feloniously fail to pay its deficiency improperly accumulated earnings tax with the Bureau of Internal Revenue for taxable year 2009 in the amount of One Million Five Hundred Eighty Five Thousand Two Hundred Fifty Nine and 34/100 Pesos only (Php1,585,259.34), exclusive of surcharge and interest, as decided and ordered by the Court of Tax Appeals and affirmed by the Supreme Court, despite the services of notices, demand letters and warrants, to the damage and prejudice of the Government.
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> CONTRARY TO LAW.

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

1. Resolution dated April 4, 2023 issued by Assistant State Prosecutor Bryan Jacinto S. Cacha, recommending that accused be charged for violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended;

2. Department of Justice (DOJ) National Prosecution Service Investigation Data Form dated February 2, 2023;

3. Authority and approval for the filing and institution of criminal action against the accused issued by the Commissioner of Internal Revenue (CIR) dated February 2, 2023; and

4. Complaint Affidavit of Revenue Officer Danieca Rose G. Darilag filed with the DOJ on February 2, 2023, with the following attachments:

    a. 2022 General Information Sheet of Heavenly Urban Chef Inc.;[1]
    b. Notice of Amended Decision with Amended Decision dated April 15, 2019 promulgated by the Court of Tax Appeals *En Banc*;[2]
    c. Notice of Judgment dated September 11, 2019 issued by Maria Lourdes C. Perfecto, Supreme Court (SC) Division Clerk of Court; [3]
    d. Entry of Judgment dated January 12, 2021 issued by Pagwadan S. Fonacier, SC Assistant Chief, Judicial Records Office; [4] and
    e. Warrant of Distraint and/or Levy dated May 26, 2022.[5]

Section 5, Rule 112 of the Revised Rules of Criminal Procedure provides as follows:

> SEC. 5. *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 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order

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[1] Annex "A", Complaint-Affidavit.
[2] Annex "B", Complaint-Affidavit.
[3] Annex "C", Complaint-Affidavit.
[4] Annex "D", Complaint-Affidavit.
[5] Annex "E", Complaint-Affidavit.

> 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.

Likewise, Section 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides as follows:

> 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 Chairperson 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.

Based on the afore-cited provisions, this Court has three options upon the filing of the criminal information, to wit: (1) immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.[6]

An examination of the Information shows that accused allegedly failed to pay the deficiency improperly accumulated earnings tax (IAET) for taxable year (TY) 2009 in the amount of ₱1,585,259.34, exclusive of surcharge and interest. However, a perusal of the supporting documents shows that the accused's basic deficiency IAET for TY 2009 is only ₱329,022.90, which is below the ₱1,000,000.00 jurisdictional amount under Section 3, Rule 4[7] of the Revised Rules of the Court of Tax Appeals. The CTA, therefore, has no jurisdiction over the present case. Accordingly, the case should be dismissed.

WHEREFORE, premises considered, CTA Crim. Case No. O-1073 is **DISMISSED** for lack of jurisdiction.

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[6] *People of the Philippines v. Hon. Ma. Theresa L. Dela Torre Yadao, etc., et al.*, G.R. Nos. 162144-54, November 13, 2012, also cited in *People of the Philippines v. Hon. Sandiganbayan (First Division), Mario L. Relampagos et al.*, G.R. No. 219824-25, February 12, 2019.

[7] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

... ...

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue of the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more;

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice