REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

TRANSTECH SHUTTLE SERVICE, INC. FILSYN Compound, Brgy. Don Jose Sta. Rosa, Laguna **JOSE NAPLIS MAGCALAYO** 128 Bulusan Street, PhVi San Jos Village LTAI Biñan Laguna **HENRY V. LI, and** 74 AT Reyes Street Mandaluyong City **LORNA LI MAGCALAYO** 128 Bulusan Street, PhVi San Jose Village LTAI Biñan, Laguna (All at large),

Accused.

CTA CRIM CASE NO. O-1048
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated: JUN 2 2 2023

3:30 p.m.

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RESOLUTION

Filed before the Court is an Information against Transtech Shuttle Service, Inc., Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo for willful failure to pay tax defined and penalized under Section 255 of the National Internal Revenue Code ("NIRC") of 1997, as amended, for expanded withholding tax for taxable year 2010.

A perusal of the record shows that the following documents were attached therewith:

1) Certified true copy of the Resolution dated January 15, 2020, signed by Assistant City Prosecutor Jeannette M. Dacpano;

2) Certified true copy of the Referral Letter dated June 04, 2019 issued by Commissioner of Internal Revenue Caesar R. Dulay for the filing of the criminal complaint against all the accused; and

3) Certified true copy of the Joint Complaint-Affidavit of Grace Gonzaga, Nimpha Malaguit, Chona D. De Ramos and Johnson F. Guevarra subscribed on June 06, 2019.

However, the Court finds that Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo were not properly charged of their offense in the Information.

The crime charged in the Information pertains to Section 255 of the NIRC of 1997, as amended, as follows:

> "**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 the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

Section 255 may be committed by any person which can mean a natural person or a juridical person. In the case at bar, the taxes that have allegedly been not paid refers to expanded withholding taxes of Transtech Shuttle Service, Inc. for taxable year 2010. The corporation is the person committing the alleged crime, not Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo. They were only impleaded as president, secretary and treasurer, respectively, of the corporation.

Therefore, Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo, as officers of the corporation, cannot be charged directly under Section 255 without citing Section 253(d), which imposes the penalty of imprisonment on tax offenses committed by a corporate taxpayer, to its president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation, to wit:

> "**SEC. 253.** *General Provisions.* –
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> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation."

WHEREFORE, having found that the Information filed was improper, for failure by Plaintiff to properly charge Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo of their crime under the NIRC of 1997, as amended, the case is **DISMISSED** without prejudice.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice