REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case Nos. O-670 & O-671
For: Violation of Section 255 of the NIRC of 1997, as amended

-versus-

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

E & D Parts Supply, Inc./ CIPRIANO C. UY and MARGARET L. UY,
Accused.

Promulgated:
SEP 05 2019 ; 10:00a

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RESOLUTION

For this Court's determination is the *Motion for Leave of Court to file Demurrer to Evidence and to Admit Attached Demurrer to Evidence* filed by the accused on July 1, 2019 without plaintiff's comment despite due notice as per Records Verification Report dated July 18, 2019. The aforesaid motion prays for the admission of the *Demurrer to Evidence* and consequently, the dismissal of the case on the ground that the prosecution failed to prove their guilt beyond reasonable doubt.

The accused are charged under Informations both dated June 13, 2017 docketed as Criminal Case Nos. O-670 and O-671[1] for failure to pay deficiency income tax (IT) and value-added tax (VAT) for taxable year 2006 in the amount of

[1] Criminal Case No. O-670 was consolidated with Criminal Case No. O-671 in this Court's Resolution dated July 11, 2018.

Php14,251,818.50 and Php4,930,734.85, respectively, committed as follows:

CTA Criminal Case No. O-670

"That on or about June 22, 2010 and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused E & D Parts Supply, Inc., a domestic corporation duly registered with the Securities and Exchange Commission and with business address at 1143-B Perez St., Paco, Manila, through its chairman and treasurer, accused Cipriano C. Uy and Margaret L. Uy, respectively, required by law to file Income Tax Return (ITR) and to pay corresponding income tax in the amount of Fourteen Million Two Hundred Fifty One Thousand Eight Hundred Eighteen Pesos and Fifty Centavos (Php14,251,818.50), exclusive of interests, for taxable year 2006, despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), issued after tax investigation, including prior and post notices, the latest being in the nature of final notice before suit issued by the Bureau of Internal Revenue on June 22, 2010, and their failure to file and protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Philippines.

Contrary to law."

CTA Criminal Case No. O-671

"That on or about June 22, 2010, in Manila, and within the jurisdiction of this Honorable Court, accused E & D Parts Supply, Inc., a domestic corporation duly registered with the Securities and Exchange Commission with business address at 1143-B Perez St., Paco, Manila, through its chairman and treasurer, accused Cipriano C. Uy and Margaret L. Uy, respectively, required by law to file Value-Added (VAT) Return and to pay the corresponding income tax, did then and there, willfully, unlawfully, and knowingly, fail to pay the aggregate deficiency VAT in the amount of Four Million Nine Hundred Thirty Thousand Seven Hundred Thirty Four Pesos and Eighty Five Centavos (Php4,930,734.85), exclusive of interests, corresponding to the four (4) quarters of taxable year 2006, despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) issued after tax investigation , including prior and post notices, the latest being in the nature of final notice before suit is issued by the Bureau of Internal Revenue on June 22, 2010, and their failure to file any protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines.

Contrary to law."

Warrants of Arrest were issued against Cipriano C. Uy and Margaret L. Uy on April 19, 2018 for Criminal Case No. O-670. Accused Margaret L. Uy posted a cash bail bond in the amount of Php20,000.00 for her provisional liberty on April 25, 2018.[2] As regards the other accused, Cipriano C. Uy, the Court learned that he already died on October 9, 2015. [3] In an Order dated May 7, 2019, the Court dismissed the case against Cipriano C. Uy but ordered that the case against accused Margaret L. Uy shall proceed.[4]

With regard to Criminal Case No. O-671, accused Margaret L. Uy voluntarily surrendered and submitted herself to the jurisdiction of the Court with the assistance of counsel on April 27, 2018. She also posted the required cash bail bond in the amount of Php20,000.00 for her provisional liberty.

Upon arraignment for Criminal Case No. 670 which was held on May 7, 2018, accused Margaret L. Uy assisted by counsel, entered a plea of "Not Guilty" to the charges filed against her.

Meanwhile, a *Motion for Consolidation of Cases* was filed by the accused on May 10, 2018.[5]

The pre-trial conference for Criminal Case No. O-670 was originally scheduled on June 21, 2018, however since a *Motion for Consolidation* was still pending with the First Division of the Court, the same was cancelled pending its resolution.[6]

The pre-trial conference and arraignment of the accused for Criminal Case No. O-671 proceeded on May 9, 2018.

Criminal Case Nos. O-670 and O-671 were consolidated in a Resolution dated July 11, 2018.[7]

During trial, plaintiff presented the following witnesses to establish its case against the accused: Reinhard Dale Anaban, Prescila H. Pagayonan, Ma. Paz Arcilla and Benhur Nacorda.

Plaintiff formally offered its exhibits marked as Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10",

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[2] Court Docket, page 89.
[3] Original Death Certificate of Cipriano C. Uy, Court Docket, pp. 99-100.
[4] Order dated May 7, 2018, Court Docket, pp. 104-105.
[5] Court Docket, pp. 151-152.
[6] Order dated June 21, 2018, Court Docket, page 139.
[7] Court Docket, pp. 156-159.

"P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-32", "P-32-a", "P-33", "P-33-a", "P-34", "P-34-a", "P-35", "P-35-a", which were all admitted by the Court as evidence for the plaintiff in the Resolution dated May 28, 2019. In this same Resolution, the Court directed the accused, if they so desire, to move for leave of court to file a demurrer to evidence and to subsequently file a demurrer to evidence within ten (10) days from receipt of notice and directed the plaintiff to file its comment or objection to the motion and demurrer within ten (10) days from receipt thereof.

Accused filed the instant *Motion for Leave of Court to file Demurrer to Evidence and to Admit Attached Demurrer to Evidence* on July 1, 2019.

The Records Verification Report dated July 18, 2019 noted that plaintiff failed to file its comment to accused's *Motion for Leave of Court to file Demurrer to Evidence and to Admit Attached Demurrer to Evidence,* hence this Resolution.

Allegations of the Accused:

Accused allege that the prosecution failed to prove that accused Margaret L. Uy is a responsible officer of E & D Parts Supply, Inc. They assert that no proof was submitted by plaintiff to establish the role or position of Margaret L. Uy in E & D Parts Supply, Inc. such as the General Information Sheet (GIS), Board Resolutions and Secretary's Certificate. For failure to prove this important element of the crime charged, the accused submit that plaintiff failed to prove their guilt beyond reasonable doubt.

Accused also declared that the tax assessments are void for being issued without a valid Letter of Authority (LOA) and cited the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[8] where the Supreme Court ruled that where there is no authority to examine the taxpayer's books of accounts and other accounting records, the assessment is deemed void.

Another ground cited by the accused for the dismissal of the criminal cases against them is the failure of plaintiff to prove that the Preliminary Assessment Notice (PAN), the Formal Letter of Demand (FLD) and the Final Assessment Notices (FANs) were sent and received by them in violation of their right to due

[8] G.R. No. 222743, April 5, 2017.

process. In relation to this, accused further submit that the Bureau of Internal Revenue (BIR) failed to prove that the person who received the PAN and the FLD/FANs was duly authorized to receive said notices on behalf of E & D Parts Supply, Inc.

Lastly, the accused avers that plaintiff failed to prove that they willfully failed to pay the assessed tax liabilities pursuant to the provisions of Section 255 of the 1997 NIRC, as amended.

Evidence Presented by Plaintiff

Plaintiff's first witness, Revenue Officer Reinhard Dale Anaban assigned at the Assessment Division, Revenue Region No. 7, BIR, Quezon City testified that among his duties is to examine the books of accounts and other accounting records of taxpayers pursuant to a Letter of Authority and/or Memorandum of Assignment and then prepare the corresponding audit reports and findings of proposed deficiency internal revenue taxes.

Plaintiff's second witness is Revenue Officer Prescila A. Pagayonan assigned at the Assessment Division of Revenue Region No. 6. BIR, Manila. She testified that among her duties and functions is to review the reports of investigation of revenue officers of various districts of Revenue Region No. 6, BIR, Manila. She was also the one who prepared the PAN with details of discrepancies against E & D Parts Supply, Inc.

On cross-examination, she testified that in the PAN, no mention was made of Margaret L. Uy.

Plaintiff's third witness is Ma. Paz Arcilla assigned at the Billing Section, Assessment Division, Revenue Region No. 6, BIR, Manila as Revenue Officer IV-Chief Billing Section. She testified that among her duties is to supervise the service and monitoring of the PANs with Details of Discrepancies, Final Decision of Disputed Assessments (FDDA), demand letters, etc. She further testified that the tax docket of E & D Parts Supply, Inc. was forwarded to their office for service of the PAN dated January 6, 2010 and for service of the Formal Letter of Demand (FLD) and Final Assessment Notices (FANs) dated January 22, 2010 at its registered address at 1143-B Perez St., Paco, Manila.

On cross-examination, she testified that she has no personal knowledge on the preparation of the PAN and that she has no personal knowledge as to the service of the PAN to the accused corporation. However, as to the FANs, Ms. Arcilla testified that they were the ones who caused their preparation. Upon cross-examination, she admitted that she has no personal knowledge as to their service to the accused corporation.

Plaintiff's third and last witness, Benhur C. Nacorda, employee of the BIR assigned as Mailing-in-Charge assigned at the Administrative Division of Revenue Region No. 6, BIR-Manila, testified that among his main functions and duties is to send by registered mail the PANs and FLD/FANs and other correspondence to taxpayers. He further testified that the PAN dated January 6, 2010 was mailed via registered mail to the registered address of E & D Parts Supply, Inc.

On cross-examination, Mr. Nacorda admitted that he did not personally seal the envelope containing the said PAN before it was mailed to the accused corporation.

The documentary evidence admitted pursuant to the Court's Resolution dated May 28, 2019 are the following:

EXHIBIT	DESCRIPTION
"P-1"	Annual Income Tax Return of E & D Parts Supply, Inc. for taxable year 2006
"P-2"	Letter of Authority
"P-3"	First Notice dated September 19, 2007
" P-4"	Second Request for Presentation of Records dated October 4, 2007
"P-5"	Final Request for Presentation of Records dated November 5, 2007
"P-6"	Recommendation of issuance of subpoena duces tecum
"P-7"	1st Indorsement dated January 22, 2008
"P-8"	Summons and/or Subpoena Duces Tecum
"P-9"	2nd Indorsement dated September 26, 2008

"P-10"	Memorandum of Assignment dated September 30, 2008
"P-11"	Letter to E & D Parts Supply, Inc. dated October 8, 2008
"P-12"	Notice for Informal Conference dated April 22, 2009
"P-13"	Report of Investigation
"P-14"	Assignment Slip
"P-15"	Preliminary Assessment Notice with details of discrepancy dated January 6, 2010
"P-16"	Registry Receipt No. 926164 dated January 7, 2010
"P-17"	Assessment Notice No. 34-2006/IT (1) dated January 22, 2010
"P-18	Assessment Notice No. 34-2006 /VT (2) dated January 22, 2010
"P-19""	Formal Letter of Demand with details of discrepancy January 22, 2010
"P-20"	Registry Receipt No. 901072 dated January 22, 2010
"P-21"	Registry Return Card
"P-32"	Judicial Affidavit of Reinhard Dale A. Anaban
"P-32-a"	Name and signature pf Reinhard Dale A. Anaban
"P-33"	Judicial Affidavit of Prescila H. Pagoyonan
"P-33-a"	Name and signature of Prescila H. Pagoyonan
"P-34"	Judicial Affidavit of Ma. Pax Arcilla
"P-34-a"	Name and signature of Ma. Paz Arcilla

"P-35"	Judicial Affidavit of Benhur C. Nacorda
"P-35-a"	Name and signature of Benhur C. Nacorda

RULING OF THE COURT

The procedure for filing a demurrer to evidence is governed by Section 23, Rule 119 of the Revised Rules of Court, and we quote:

> "Section 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment."

A demurrer to evidence is an objection of one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[9]

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[9] Gutib vs. CA, G.R. No. 131209, August 13, 1999.

The accused are charged for violation of Section 255 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, quoted 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. (underscoring supplied)

In relation thereto, Sections 253 (d) and 256 of the 1997 NIRC, as amended, are quoted below:

> "Section 253. **General Provisions.**
>
> 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." (emphasis supplied)
>
> "Section 256. *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (Php50,000) but not more than One hundred thousand pesos (Php100,000)."

The following are the elements of the crime of violation of the aforequoted Section 255 in relation to Sections 253 (d) and 256 of the same Code, thus:

1. That a corporate taxpayer is required under the 1997 NIRC, as amended, to pay any tax;

2. That the corporate taxpayer failed to pay the required tax at the time or times required by law or rules and regulations;

3. Such failure to pay was willful;

4. That the accused is the responsible officer of the corporate taxpayer.

It is well-settled that the burden of proof is on the prosecution, and unless it discharges this burden, the accused need not even offer evidence in his behalf and he would be entitled to an acquittal.[10]

Based on the provisions of Section 253 (d) of the 1997 NIRC, as amended, the penal liability for the violation of Section 255 of the same Code devolves on the responsible officers of the accused corporation.

A careful review of the documentary exhibits presented by plaintiff shows that the official notices, more importantly the PAN and the FLD/FANs of this case were addressed to accused E & D Parts Supply, Inc. without including the accused Margaret L. Uy as its responsible officer.[11] Even the Annual Income Tax Return (ITR) of E& D Parts Supply, Inc. for taxable year 2006 did not indicate Margaret L. Uy as its responsible officer. In fact, the name "Everett S. Uy" was the signatory to the said 2006 Annual ITR [12] whose designation may be any of the following: "President/Vice-President/Principal Officer/Accredited Tax Agent" as provided in the Annual ITR (BIR Form 1702).

It was also revealed that plaintiff did not present evidence to disclose the names of the responsible officers of the accused corporation at the time the crime was allegedly committed. Plaintiff did not present the Articles of Incorporation (AOI) and the General Information Sheet (GIS) of accused E & D Parts, Supply, Inc., to show that the accused Margaret L. Uy is its responsible officer at the time the crime was allegedly committed on June 22, 2010.

Further, none of the revenue officers presented by the plaintiff as its witnesses, pinpointed Margaret L. Uy as a

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[10] Nilo Macayan, Jr. vs. People of the Philippines, G.R. No. 175842, March 18, 2015.
[11] Exhibits "P-15", "P-17", "P-18" and "P-19".
[12] Exhibit "P-1"

responsible officer of the accused corporation E And D Parts, Supply, Inc. They all testified that in the course of their investigation, they were concerned with the liabilities of the accused corporation.

We quote portions of the testimony of Revenue Officer Reinhard Dale A. Anaban:

> Q11. Now in the performance of your duties and functions as Revenue Officer of RDO No. 34, did you come across a taxpayer named E & D Parts Supply, Inc., the accused in this case?
>
> A. I came across the accused E & D Parts, Supply, Inc., because I was the Revenue Officer assigned to continue the examination/investigation of its books of accounts and other accounting records for taxable year 2006, wherein as per records, Letter of Authority No. LOA 2007 00000616 dated September 14, 2007 was issued by Regional Director Alfredo V. Misajon of Revenue Region No. 6, BIR, Manila, authorizing revenue officer Dominga G. Madula to examine the accused *(sic)* books of accounts and other accounting records for taxable year 2006.
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On cross-examination, Richard Dale A. Anaban, testified thus:

> Q. Also in your Answer No. 14 and 15, you mentioned of two (2) documents, a Letter of Authority and a 1st Notice. I am showing them to you again as Exhibit "P-1" and P-3", can you please go over them and tell us if the name Margaret Uy appears in both documents.
>
> A. The name, Margaret Uy does not appear on these documents.
>
> Q. Thank you, Mr. Witness. In Answer to No. 18, you mentioned of 2nd Request for the Presentation of Records that would be "P-4", can you please go over the document Mr. Witness, and tell us if the name, Margaret Uy appears in that document?
>
> A. No, Ma'am.

The testimony of Revenue Officer Prescila H. Pagayonan assigned at the Large Taxpayers Division of the BIR similarly focused on the examination of E & D Parts Supply, Inc. , without mentioning the accused Margaret L. Uy. We quote a portion of her testimony, thus:

Q6. In the performance of your functions and duties as a Revenue Officer-Reviewer, did you come across a taxpayer named E & D Parts Supply, Inc., one of the accused in this case?

A. Yes.

Q7. How did you come across with the accused?

A. On July 1, 2009, the all *(sic)* internal revenue tax docket of accused for taxable year 2006, together with the report of investigation were assigned to me, through Assignment Slip, for review.

On cross-examination, Prescila H. Pagayonan testified thus:

Q. – In Question No. *(sic)* 11 and 12, you mentioned and identified a Preliminary Assessment Notice, marked as Exhibit P-15, how many pages were that?

A. Three (3) pages.

Q. – Can you please go over the document, in those three (3) pages if the name Margaret Uy appears in that document.

A. No, Ma'am.

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It may be recalled that the Informations filed against the accused identified Margaret L. Uy as the Treasurer of E & D Parts Supply, Inc. but plaintiff, during trial, failed to adduce proof of her designation as such officer at the time the crime was allegedly committed. In fact, it did not adduce any proof to identify any of the officers in the accused corporation.

Without any proof of her role or designation/position in the accused corporation, accused Margaret L. Uy cannot be held criminally liable for the alleged acts of the accused E & D Parts, Supply, Inc. committed on or about June 22, 2010.

Under Section 23, Rule 119 of the Revised Rules of Court, the Court is required to ascertain whether the evidence presented by the prosecution is sufficient to support a verdict of guilt against the accused. In the instant case, plaintiff was not able to establish the guilt of the accused as it failed to prove that she is one of the responsible officers in the accused corporation.

In view of the foregoing, the *Motion for Leave of Court to file Demurrer to Evidence and to Admit Attached Demurrer to Evidence* filed on July 1, 2019 is hereby **GRANTED**.

Accused's *Demurrer to Evidence* is also **GRANTED.** Accordingly, CTA Criminal Case Nos. O-670 and O-671 are **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice