REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SHIH CHUN HSUING
T 4000 Mac-Arthur Hi-way, Tikay,
Malolos, Bulacan
(AT-LARGE),
Accused.

CTA CRIM. CASE NO. O-296
(XV-17-INV-12D-394)
For: Violation of Sections 255 and 256 of the National Internal Revenue Code, as amended.

Members:
BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated: NOV 26 2012
ABFernandez 3:53 p.m.

x---x

RESOLUTION

On September 18, 2012, the Court promulgated a Resolution ordering Assistant City Prosecutor Randy C. Caingal and City Prosecutor Hilda A. Fantastico-Ibuyan to make the necessary correction on the Resolution dated July 3, 2012, issued by the Office of the City Prosecutor of Valenzuela City, resolving the complaint filed by the Bureau of Internal Revenue; to forward the original or certified true copies of the recommendation for criminal prosecution of the accused, or approval of the filing of Information by the Commissioner of the Bureau Internal Revenue; to present the Affidavit or Counter-Affidavit of the accused, if any and the entire records of the Preliminary investigation; and to present additional evidence, if any.

On September 28, 2012, prosecution filed its "Manifestation with Compliance" submitting the Corrected Resolution dated September 24, 2012; stating that the accused did not appear during the preliminary investigation; and that a certified true copy of Revenue Delegation Order No. 02-07 was attached to its "Manifestation with Compliance" dated August 29, 2012. Prosecution's "Manifestation with Compliance" is hereby **NOTED**.

However, prosecution still failed to submit the original or a certified true copy of the recommendation for criminal prosecution of the accused, or approval of the filing of Information by the Commissioner of the Bureau Internal Revenue, as ordered by the Court in its Resolution dated July 3, 2012.

Section 220 of the National Internal Revenue Code, as amended states:

> "SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but <u>no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner</u>." (Underlining Ours.)

Section 2 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended states further:

> "SEC. 2. *Institution of criminal actions.* - All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. <u>In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing.</u> In criminal actions involving violations of the Tariff and Customs code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing " (Underlining Ours.)

Prosecution explains in its "Manifestation with Compliance" dated September 28, 2012, that the submission of a certified true copy of Revenue Delegation Authority Order No. 02-07 in its "Manifestation and Compliance" dated August 29, 2012 is in compliance with the order of the Court asking for the submission of the original or certified true copies of the recommendation for criminal prosecution of the accused or approval of the filing of Information by the Commissioner of the Bureau Internal Revenue. Prosecution is mistaken in its belief that the Revenue Delegation Authority and the recommendation for prosecution of the accused or approval of filing of Information by the BIR are one and the same. They are two separate requirements. Unlike general delegation of powers, the latter requirement is a letter recommendation from the Commissioner of Internal Revenue ordering the specific prosecution or filing of the criminal case against the accused. In addition, the recommendation for filing of criminal charges against the accused, issued by Regional Director Tomas C. Rosales, dated April 3, 2012 is a mere machine copy. Thus, failure to present the same to the Court upon order is a ground for dismissal.

In view of the foregoing, the case is hereby **DISMISSED** for failure to comply with the Court's orders.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice