CTA Form No. 8 (For DCC)

13-000104-0012

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-331

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BENITO F. SANTOS, JR.
c/o UBE CONSTRUCTION CORP.
28B Mapagkawanggawa St., Teacher's Village, Quezon City,
Accused.

NOTICE OF RESOLUTION

To:

SR. ASST. CITY PROSECUTOR JULAN C. ILAO, MNSA
2nd ASSISTANT CITY PROSECUTOR ALFREDO P. AGCAOILI
ASSISTANT CITY PROSECUTOR RONALD C. TORRALBA
Office of the City Prosecutor
Department of Justice
Quezon City

COMMISISONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
Thru: General Services Division
Building C and D, Filinvest Cyberzone
Bay City, Pasay City

PNP Chief
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGEn Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman
Quezon City

GREETINGS:

You are hereby notified by these presents that on **November 20, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 26, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BENITO F. SANTOS, JR.
c/o UBE CONSTRUCTION CORP.
28B Mapagkawanggawa St., Teacher's Village, Quezon City
(AT LARGE)
Accused.

CTA CRIM. CASE NO. O-331
For: Violation of Sections 56(b), 106(a) & 255 in relation to Sections 27 and 108 of the NIRC

Members:

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

Promulgated: NOV 20 2024 3:25 PM

x - x

RESOLUTION

For the Court's action is plaintiff's **Entry of Appearance** with attached **Motion to Amend Information with Leave of Court (Motion to Amend Information)** filed on October 11, 2024.

To recall, the Court, in its Resolution dated July 30, 2024, required plaintiff to:

1. take appropriate action on the noted discrepancy in the Information and its attachments, pertaining to the taxable person liable for the alleged deficiency taxes; and,

2. submit proof of service/mailing and actual receipt by accused Benito F. Santos, Jr. of Final Assessment Notice/ Formal Letter of Demand (FAN/FLD) No. 39-B053-07 dated July 9, 2010, both within five (5) days from notice.

Subsequently, the Bureau of Internal Revenue (BIR), through its counsels, filed a Motion for Extension of Time (In Re: Resolution dated July 30, 2024) requesting for an additional period of fifteen (15) days within which to comply with the July 30, 2024 Resolution.

On September 4, 2024, the BIR filed its Compliance with Motion and Manifestation (Re: Resolution dated July 30, 2024) [Compliance] with attached document allegedly "evidencing proof of service" of the subject FAN/FLD.

On October 11, 2024, Senior Assistant City Prosecutor Julan C. Ilao, MNSA filed via electronic mail the present Entry of Appearance with attached Motion to Amend Information.

The Court notes the Entry of Appearance.

Anent the Motion to Amend Information, plaintiff prays that it be allowed to amend the Information filed on April 16, 2013 to correct the discrepancy in said Information. Plaintiff prays that the Information be amended to read:

> "That on or about the 9th day of August 2010, and for sometime prior thereto and persisting up to the present in Quezon City, Philippines, the above-named accused being then the President of UBE CONSTRUCTION CORP., did then and there willfully and unlawfully fail, neglect and still fails and refuses and neglects to pay the Deficiency Income Tax in the amount of P7,379,614.94, Deficiency Value Added Tax of P3,382,808.69 of UBE CONSTRUCTION CORP., exclusive of interest and surcharges of P27,401.09 or a total of P10,789,824.72 , Philippine Currency, computed as of July 9, 2010 covering taxable year 2007, under Assessment Notice F-45-06-124 dated July 9, 2010 which he failed and refused to pay the aforesaid deficiency Income Tax and Value Added Tax for taxable year 2007 resulting in the deprivation of revenues for the Government and/or the BUREAU OF INTERNAL REVENUE herein represented by ATTY. LORNA SB. CRUZ in the amount aforementioned.
>
> CONTRARY TO LAW."[1]

Section 14 of Rule 110 of the Revised Rules of Court provides:

> **Section 14.** *Amendment or substitution.* — A complaint or **information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea**. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused. xxx (Emphasis supplied)

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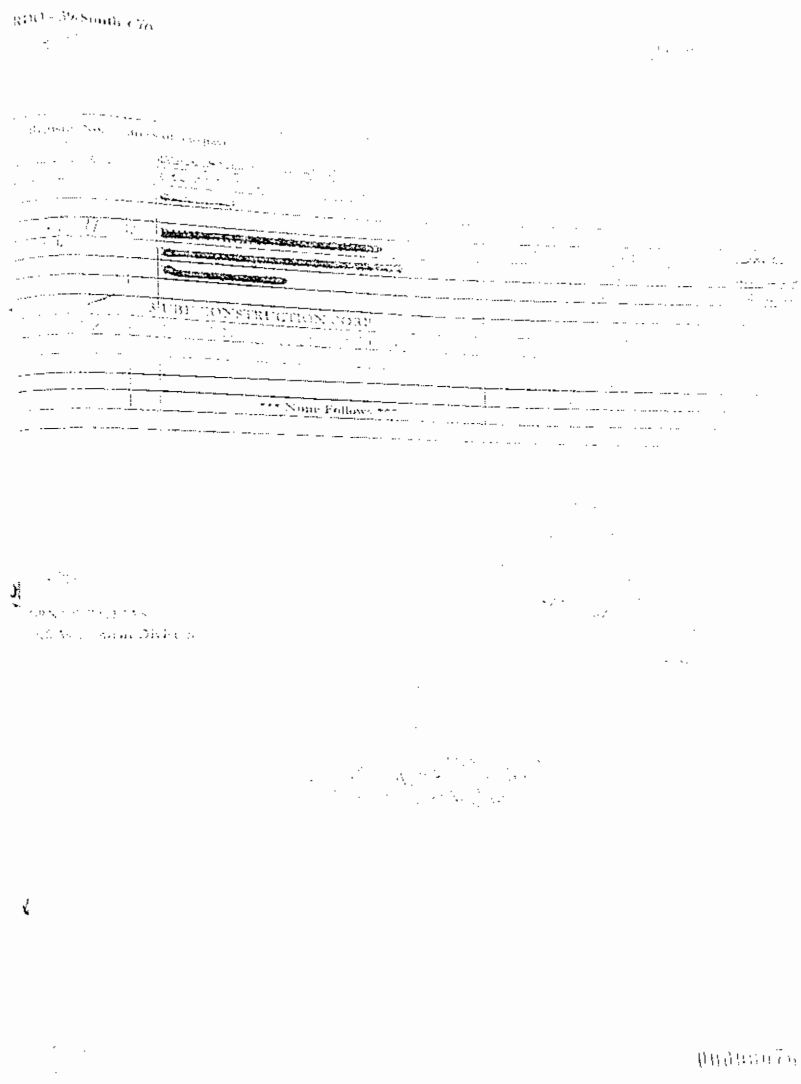
[1] CTA Docket, pp. 82-83.

An Information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. Considering that accused Benito F. Santos, Jr. has not been arraigned, the Motion to Amend Information with Leave of Court is deemed granted.

The Court will now determine the existence of probable cause in the present case.

An examination of document attached to the Compliance filed by the BIR on September 4, 2024 reveals that it pertains to an internal communication within the BIR. Specifically, it is a document evidencing the receipt of Revenue District Office (RDO)- 39-South City of a list of Final Assessment Notice Letters supposedly issued to various taxpayers, including UBE Construction Corp., from the Chief, Billing Section of Revenue Region No. 7 Quezon City 5th Floor- Assessment Division. For easy reference, the document is shown below:


RDO - 39-South City

[redacted]

UBE CONSTRUCTION CORP

*** None Follows ***

Notably, nowhere in the above document is it shown that the FAN/FLD dated July 9, 2010 had been mailed to UBE Construction Corp. Even more glaring is that the document does not show that said FAN/FLD was actually received by accused Benito F. Santos, Jr.

In the July 30, 2024 Resolution, the Court extensively discussed that absent any proof that the final notice and demand for payment was received by the taxpayer, there is no basis to conclude that an offense of willful failure and refusal to pay deficiency tax assessment has been committed. In the present case, considering that plaintiff failed to establish accused's receipt of the FAN/FLD, it cannot be said that accused committed the crime of willful failure to pay tax.

WHEREFORE, premises considered, the Court resolves to:

1. **NOTE** the Entry of Appearance filed by Senior Assistant City Prosecutor Julan C. Ilao, MNSA;

2. **GRANT** the Motion to Amend Information with Leave of Court;

3. **DISMISS** the Amended Information contained in the Motion to Amend Information with Leave of Court; and,

4. **RECALL and SET ASIDE** the Alias Warrant of Arrest dated May 12, 2014.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice