REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BENJAMIN HIAN TEK CO CUA,
52 A. Victoria St., 13th cor New Manila, Quezon City,
Accused.

CTA Crim. No. O-262
(I.S. No. XV-03-INV-10k-09672)

Violation of Section 255 in relation to Sections 220 and 56(b) of the National Internal Revenue Code of 1997

Members:

Acosta, ***Chairperson,***
Uy, ***and***
Fabon-Victorino, ***JJ.***

Promulgated:

MAY 18 2012 ; 2:00 p.m.

x - x

RESOLUTION

Records show that on February 13, 2012, the prosecution filed an Information, charging herein accused for violation of Section 255 in relation to Sections 220 and 56(b) of the National Internal Revenue Code of 1997, allegedly committed as follows:

> "That on or about the **19th day of June 2009** and for sometime prior thereto and persisting up to the present, in Quezon City, Philippines, the above-named accused, did then and there willfully and unlawfully fail, neglect and still fails and refuses and neglects to pay his defficiency *(sic)* income tax of **P25,773,611.42** under Assessment Notice No. **029-31-000298-99** dated April 14, 2003 exclusive of interest of **P15,449,617.65 and/or** in the total amount of **P41,248,229.07** computed as of **April 14, 2003** which he failed to pay resulting in the deprivation of revenues for the Government and/or the **BUREAU OF INTERNAL REVENUE** for the **taxable year 1999** despite repeated demands and notice thereofore *(sic)*, in violation of the aforesaid law.

CONTRARY TO LAW."

In the Resolution dated February 22, 2012, this Court ordered the prosecution: (1) to submit the entire records of the preliminary investigation conducted, including the affidavit-complaint, and (2) to show appropriate authority to file the Information.

Subsequently, the Judicial Records Division of this Court issued the letter dated April 2, 2012, addressed to Atty. Margarette Y. Guzman, Executive Clerk of Court III, informing the latter that counsel for the prosecution failed to comply with the said Resolution.

Notwithstanding the prosecution's non-compliance with the said Resolution, We shall determine the existence or non-existence of probable cause.

THE COURT'S RULING

Without doubt, it is not required that the *complete* or *entire* records of the case during the preliminary investigation be submitted to and examined by the judge,[1] to determine the existence of probable cause. What is required, rather, is that the judge must have *sufficient* supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause.[2]

After a circumspect perusal of the documents attached by the prosecution on the Information, We find the **non-existence of probable cause**.

Said documents are as follows:

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[1] *Ho vs. People of the Philippines, et al., etseq.*, G.R. Nos. 106632 and 106678, October 9, 1997.

1. Resolution dated December 21, 2011 signed by the Assistant City Prosecutor, Zenaida A. Abad;[3]
2. Subpoena dated December 6, 2010, issued by the Office of the City Prosecutor of Quezon City;[4]
3. Subpoena dated January 13, 2011, issued by the Office of the City Prosecutor of Quezon City;[5]
4. Investigation Data Form;[6]
5. Letter dated April 20, 2010 of the Regional Director of Revenue Region No. 7 – Quezon City, Mr. Antonio F. Montemayor, recommending the criminal prosecution of the accused, and attaching a supporting Affidavit executed by Atty. Philip A. Mayo of the Legal Division of the said Revenue Region;[7]
6. Demand Before Suit dated June 19, 2009, signed by the Chief of the Legal Division of Revenue Region No. 7 – Quezon City, Jose Ric A. Cabrera;[8]
7. Assessment Notice dated April 14, 2003, numbered 029-31-00298-99;[9]
8. Memorandum dated January 19, 2009 addressed to the Chief, Collection Section of Revenue District No. 39- South Quezon City, submitted by Revenue Officer Ednafe D. Cruz;[10]
9. Final Notice Before Issuance of Warrant of Distraint and Levy dated February 5, 2008, issued against the accused;[11]

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[2] Id.
[3] Docket, pp. 3 to 4.
[4] Docket, p. 5.
[5] Docket, p. 6.
[6] Docket, p. 7.
[7] Docket, pp. 8 to 9.
[8] Docket, p. 10.
[9] Docket, p. 11.

10. Demand Letter dated April 14, 2003, issued by the Regional Director of Revenue Region No. 6 – Manila, Mr. Ruperto P. Somera;[12]
11. BIR Form No. 0500, showing the computation of the supposed tax liabilities of the accused;[13]
12. Referral of the case from Revenue District No. 29 – Manila to Revenue Region No. 7 – Quezon City, upon the finding that the accused is now residing at No. 52-A Victoria Street, 13th Corner, Quezon City, which is outside the territorial jurisdiction of the said Revenue District;[14]

Items 1 to 5 are merely to the effect of the initiation and the conduct of the proceedings before the Office of the City Prosecutor; while the remaining items are indicative only of the effort of the Bureau of Internal Revenue (BIR) to collect from the accused the assessed deficiency income tax (plus interest) for taxable year 1999, computed by the BIR as follows:

Net Loss per Return			₱ (24,352,220.46)
Add: Adjustment per review			
Unrecorded Gain on Sale of Land by way of Dacion En Pago			
Acceptance Payable – beginning		₱ 629,792,000.00	
Acceptance Payable – ending		133,264,957.14	
Selling Price		496,527,042.86	
Less: Cost of Land & Building			
Beginning	₱ 497,233,585.24		
Ending	103,160,615.62	394,072,969.62	
Gain on Sale			102,454,073.24
Adjusted Net Income per review			₱ 78,101,852.78
Deficiency Income tax due			₱ 25,773,611.42

[10] Docket, pp. 12 to 13.
[11] Docket, p. 14.
[12] Docket, p. 15.
[13] Docket, p. 16.
[14] Docket, pp. 17 to 18.

The prosecution failed to present any supporting document or sworn statement of witnesses which can establish the BIR's finding of *"Unrecorded Gain on Sale by way of Dacion En Pago"* against the accused. Such circumstance is material for the determination of probable cause because that would ascertain that accused was indeed required to pay the subject tax. In this connection, it must be recalled that under Section 255 of the NIRC of 1997, the elements of the crime are as follows: (1) the accused is **required under the NIRC of 1997** or the rules and regulations promulgated under the same Code, **to pay any tax**, make a return, keep any record, or supply correct and accurate information, and (2) the accused willfully failed to pay any tax, make a return, keep any record, or supply correct and accurate information.

Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.[15] In this case, the facts and circumstances are wanting for this Court to believe that the offense charged has been in fact committed by the accused.

WHEREFORE, premises considered, the above captioned case is hereby **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[15] *Ho vs. People of the Philippines, et al., etseq.*, supra.