REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

DAVID TE TAN,
c/o Stanford Marketing
453 Quintin Paredes Street,
Binondo, Manila,
Accused.

CTA CRIM. CASE No. O- 148
(I.S. No. 08A-00132)
For: Violation of Section 255
Of the Tax Code

Members:

Acosta, Chairman,
Bautista, and
Casanova, *JJ.*

Promulgated:
OCT 21 2009; 9:20am

x -x

RESOLUTION

On September 16, 2009, in Compliance with this Court's Resolution dated August 25, 2009, plaintiff filed its "Compliance and Manifestation with Motion to Admit Amended Information".

The said Compliance is hereby **NOTED** and the Amended Information is hereby **ADMITTED**. The Amended Information charges the accused **David Te Tan**

34

of violating Section 255 of the National Internal Revenue Code (NIRC), in an Information alleging:

> "That on or about April 11, 2006, in the City of Manila, Philippines, the said accused, DAVID TE TAN, a proprietor of STANFORD MARKETING with business address at Rm. 453 Quintin Paredes Street, Binondo, this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still fails, refuses and neglects to pay their deficiency internal revenue tax liabilities for the year 2002, to wit:

Kind of Tax	Assessment No./ Demand Letter	Date	Amount
Def. Income	30-2002	4-11-06	P3,145,427.73
Compromise Penalty	30-2002	4-11-06	75,000.00

> or in the total amount of P3,220,427.73, despite notice and service of said assessment and Warrant of Distraint and/or Levy dated November 26, 2007, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P3,220,427.73, Philippine Currency.
>
> Contrary to law."

Attached to the original Information are the following documents:

> Resolution of Francisco L. Salomon, Fourth Assistant City Prosecutor, in I.S. No. 8A-00132, recommending the filing of the case against herein accused, bearing the recommending approval of Antonio M. Israel, Second Assistant City Prosecutor, Chief, Third Division and the approval of Jhosep Y. Lopez, City Prosecutor;
>
> The referral for immediate criminal prosecution of herein accused signed by Regional Director Alfredo V. Misajon, pursuant of Revenue Delegation Authority Order No. 2-2007 dated March 01, 2007;

35

Affidavit of Ramon B. Lorenzo, recommending the criminal prosecution of herein accused;

Assessment Notice No. 30-2002 and Demand Letter dated April 11, 2006;

The Counter Affidavit of the accused, with attachments consisting of the Notice of Availment of Tax Amnesty, BIR Tax Payment Deposit Slip, from the Land Bank of the Philippines, Amnesty Tax Payment Form, BIR Form No. 0616 with the Acceptance of Payment Form, BIR Form No. 0617; Tax Amnesty Return BIR Form No. 2116; Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005; Balance Sheet and the Amended Balance Sheet for the same period; and

Reply (To Counter-Affidavit) of Ramon B. Lorenzo, with attached Basic Guide on the Tax Amnesty Act of 2007.

With the submission of the Amended Information, the Court is tasked to evaluate the Information, as well as, the supporting documents/evidence filed by the State Prosecutor to determine if there is probable cause to go on with the prosecution of the case, as provided under Section 6(a) Rule 112 of the Rules of Court[1] and Rule 9 of the Revised Rules of the Court of Tax Appeals[2].

---

[1] *"Sec. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court.- Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from filing of the complaint or information."*

[2] *"SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, ex parte, within five days from notice."*

36

Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused.[3] And once the Information is filed, the determination of the presence or absence of probable cause for the issuance of a warrant of arrest against the accused, or for the withdrawal of the Information, or for the dismissal of the case, is addressed to the sound discretion of the Court.[4]

In this case, the prosecutor found that there was sufficient evidence to show that the books of Stanford Marketing was examined by the Bureau of Internal Revenue (BIR), and as a result, it was required to pay, under Assessment/Demand Letter No. 30-2002 dated April 11, 2006, its deficiency tax liability in the total amount of P3,220,427.73; that the BIR sent demand letters to herein accused as proprietor thereof, but the latter failed and refused to pay.

In his Counter-Affidavit, the accused alleges that: (1) a scrutiny of the deficiency assessment notices would disclose that it was issued three (3) days before the BIR's right to assess prescribed; (2) the assessments were "table assessments" and arbitrary having been issued without full blown investigation; (3) the deficiency income tax arose from disallowance of expenses incurred in the ordinary course of business and that the compromise penalty assessed has no basis; (4) there was no proof of receipt of the deficiency assessment; (5) the complaining witness from the Legal Division does not have personal knowledge of the circumstances of the case, since the assessment was issued by the BIR Assessment Division; (6) having availed of the Tax Amnesty program of the BIR, he is entitled to the privileges and immunities under the law, which include immunity from payment of taxes and the appurtenant civil, criminal, and administrative penalties arising from failure to pay any internal revenue tax from 2005 and prior years.

---

[3] *Allado vs. Diokno, 232 SCRA 192.*
[4] *Sarigumba, et al. vs. Sandiganbayan, 451 SCRA 533.*

37

The Bureau's complaining witness, Ramon B. Lorenzo, in his Reply (to Counter-Affidavit), on the other hand maintains that contrary to the allegations of the accused, the subject assessments have long been overdue and delinquent, and have become incontestable. According to him, delinquent accounts are considered assets of the government, excepted from the coverage of amnesty under the law.

The public prosecutor found that the accused, proprietor of Stanford Marketing was found to be liable to pay deficiency income tax; that the assessment and the demand to pay remained unheeded; and that this deficiency had become a delinquent account. Following Republic Act No. 9480, on the Tax Amnesty, it was found that the accused cannot avail of the tax amnesty program.

The findings of the public prosecutor on the existence of probable cause (that justifies the filing of an Information with the Court against the accused), as a general rule, must be accorded great weight. The Supreme Court said that if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion and prejudice on the part of the public prosecutor, the Court should respect that determination.[5] However, in this case the Court holds such findings erroneous.

As stated in the Resolution of the Office of the City Prosecutor, the accused submitted photocopies of the Notice of Availment of Tax Amnesty dated December 18, 2007, filed with the Regional Office District 30, Region 6 and the validated payments made with the Land Bank. The accused correctly argued that since he availed of the Tax Amnesty Program of the Government pursuant to Republic Act No. 9480, he was granted certain immunities and privileges, including immunity from the payment of

---

[5] *People vs. Court of Appeals (G.R. No. 126500, January 21, 1999).*

38

taxes, as well as, immunity from civil, **criminal**, and from administrative penalties under the NIRC.[6]

Accused, as proprietor of Stanford Marketing, is being prosecuted for the alleged violation of Sec. 255 of the NIRC, for the company's willful and unlawful failure, refusal, and neglect to pay deficiency internal revenue tax liabilities for 1997.

On the other hand, accused submitted the following documents to show availment of Tax Amnesty:

(a) Notice of Availment of Tax Amnesty dated December 18, 2007, stamped received by the Bureau of Internal Revenue on December 20, 2007;

(b) Land Bank Payment Deposit Slip dated December 19, 2007;

(c) Amnesty Tax Payment Form, BIR Form No. 0616, stamped received by the Bureau of Internal Revenue on December 20, 2007;

(d) Tax Amnesty Payment Form (Acceptance of Payment Form) BIR Form No. 0617;

(e) Tax Amnesty Return BIR Form No. 2116; and

(f) Statement of Assets, Liabilities and Networth (SALN), Balance Sheet, and Amended Balance Sheet as of December 31, 2005.

---

[6] *Sec. 6. Immunities and Privileges. – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:*

1. The taxpayer shall be immune from the payment of taxes, as well as addition thereto, all the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes foe taxable year 2005 and prior years. xxx

Complainant, the Bureau of Internal Revenue, speaking through Ramon B. Lorenzo, did not challenge the validity, the correctness, or the authenticity of the above-enumerated documents. Instead, he merely claims that since the assessments have long been overdue and delinquent, they have become incontestable with the Prosecutor's Office and the ordinary courts under Section 205 and 228 of the NIRC. He explains that "Delinquent Accounts/Accounts Receivables, which are considered assets of the BIR/Government, xxx as in accused' case, are excepted from the coverage of the amnesty as provided under the law, implementing regulations and revenue issuances and enumerated in the 'Basic Guide on the Tax Amnesty Act of 2007'."[7]

Contrary to the claim of the Bureau of Internal Revenue, Section 1 of the tax amnesty provides that it shall cover **all national internal revenue taxes for the year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005**. The only exceptions are found in Section 8 thereof and delinquent accounts/accounts receivables are not included in the enumeration, on the contrary, delinquent accounts are precisely within the coverage of the law.

The supposed "Basic Guide on the Tax Amnesty Act of 2007" cannot supplant or amend the Tax Amnesty Law. To hold that assessments which have attained finality cannot be covered by the amnesty is contrary to the clear provisions of the Tax Amnesty Law. It is an elementary rule in statutory construction that administrative issuances cannot expand or limit the letter and the spirit of the law they seek to enforce. And in case of conflict between the basic law and the rule or regulation issued to implement said law, the law prevails.[8]

---

[7] *Rollo, page 22.*
[8] *People vs. Lim, 108 Phil. 1091.*

40

The accused' availment of the benefits under the Tax Amnesty Law granted him immunity not only from civil and administrative penalties, but also from criminal liabilities, under the National Internal Revenue Code, for the year 2005 and prior years. This criminal case stemmed from unpaid assessments for 1997, with the availment of the Tax Amnesty Law, accused became immune from criminal liability. In sum, the Court finds lacking, the existence of probable cause to go with the case.

WHEREFORE, the case is hereby **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

41