REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-654** **(NPS Docket No. XV-07-INV-17G-04267)** For: Violation of Section 255, in relation to Sections 253 (d) & 256, of the NIRC of 1997, as amended by R.A. 8424
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson*
MARINA C. BABASA & PEDRO C. CARANDANG, *Accused.*	**CASANOVA**, *and* **MANAHAN**, *JJ.*
	Promulgated: DEC 01 2017 4:29 p.m.

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RESOLUTION

On November 9, 2017, an Information was filed by the prosecution against the accused Marina C. Babasa & Pedro C. Carandang, as President and Treasurer, respectively, of Portland Chemicals Corporation for violation of Section 255 in relation to Section 253 (d) and 256 of the 1997 National Internal Revenue Code ("1997 NIRC") as amended by Republic Act (RA) No. 8424, which reads as follows:

> "The undersigned accuses Marina C. Babasa & Pedro C. Carandang of VIOL. Of Sec. 255 in rel. to SEC. 253 (d) and 256 of the National Internal Revenue Code of 1997 as amended by R.A 8424 committed as follows:

That on or about January 25, 2014, and for sometime prior thereto, in the City of Manila, Philippines, the said accused, being then the President and Treasurer, respectively of Portland Chemicals Corporation with business address at 2354 Concha St., San Andres, this City, did then and there willfully, unlawfully fail and refuse and neglect as they still fail, refuse and neglect to pay the deficiency internal revenue tax liabilities for the year 2010 in the amount of Php2,281,187.88 under Assessment/Demand Letter No. 34-10-IT-630 and 34-10-VT-6308, despite notice and service of said assessment and Warrant of Distraint and /or Levy dated January 24, 2014, without formally protesting against or appealing the same and repeated demands made upon them to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P2,281,187.88, Philippine Currency.

Contrary to law."

Attached thereto are the following supporting documents by the Department of Justice Prosecution Staff:

1) Resolution dated September 25, 2017 issued by Assistant State Prosecutor Irene Coloso- Zabala and duly approved by Senior Assistant City Prosecutor Raymunda A. Cruz Apolo and City Prosecutor, Edward M. Togonon, recommending that respondents Marina C. Babasa & Pedro C. Carandang be charged with violation of Section 255 of the Tax Code of 1997 and for filing of the requisite Information against them.

2) Original Copy of the Authority and Approval for the filing and institution of the criminal complaint against Portland Chemicals Corporation and its responsible officers, Marina C. Babasa & Pedro C. Carandang.

3) Joint Complaint-Affidavit of BIR revenue officers, Jefferson T. Ocampo and Sarah H. Dolina dated July 21, 2017 with office address at c/o Legal Division, Revenue Region No. 6, Bureau of Internal Revenue Manila, 5th floor, BIR Building I, Solana St., Intramuros, Manila with the following attachments:

    a. Assessment Notice issued on January 24, 2014 for income tax deficiency;

    b. Assessment Notice issued on January 24, 2014 for value-added tax deficiency;

c. Formal Letter of Demand dated January 24, 2014 for deficiency income and VAT for taxable year ending 2010 with Details of Discrepancies;

d. Letter of Authority dated August 31, 2011;

e. Memorandum of Assignment addressed to revenue officers Reinhad A. Anaban and Alma Celestial T. Caybayab;

f. List of Audit Requirements Per Tax Type dated September 1, 2011;

g. First Request for Presentation of Records;

h. Second Request for Presentation of Records;

i. Final Notice addressed to Portland Chemicals Corp. dated September 19, 2011;

j. Notice for Informal Conference dated July 29, 2013;

k. Memorandum for the Regional Director dated August 22, 2013;

l. Assignment Slip;

m. Preliminary Assessment Notice (PAN) for deficiency income taxes and VAT for taxable year ended 2010 dated January 7, 2014;

n. Preliminary Collection Letter dated June 9, 2014;

o. Final Notice Before Seizure dated July 4, 2014;

p. Warrant of Distraint and/or Levy signed by Regional Director, Araceli L. Francisco;

q. Warrants of Garnishment addressed to the following banks:

1. Land Bank of the Philippines;

2. HSBC Philippines;

3. Union Bank of the Philippines;

4. East West Banking Corporation;

5. Philtrust Bank;

6. Metrobank ;

7. United Coconut Planters Bank;

8. Security Bank;

10.Citibank;

10.China Banking Corporation;

11.Banco de Oro;

12.Bank of the Philippine Islands.

r. Memorandum dated March 25, 2015 signed by Revenue Officer II, Jefferson T. Ocampo;

Based on the allegations in the Information, the accused are charged herein for violation of section 255 in relation to Section 253 (d) and 256 of the 1997 NIRC, as amended by RA 8424. allegedly due to the failure of Portland Chemicals Corporation to pay its income taxes and VAT in the total amount of Php2,281,187.88 for taxable year 2010.

The Court will now determine probable cause for the issuance of the warrant of arrest.

The primary offense charged is the crime of failure to pay tax under Section 255 of the 1997 NIRC which has the following elements, to wit:

(a) That a corporate taxpayer is required under the 1997 NIRC, or by rules and regulations, to pay any tax, make a return, keep any 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.

(b) That the corporate taxpayer failed to pay the required tax, make a return or keep the required record or supply the correct and accurate information.

Section 253 (d) of the 1997 NIRC provides the persons to be held liable in case the crime is alleged to have been committed by a juridical person, thus:

> "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." (italics ours)

Upon a careful consideration of the supporting documents attached to the records of the case, the Court finds that there is no probable cause to issue a warrant of arrest for the following reasons:

(a) There was no evidence to support that MARINA C. BABASA and PEDRO C. CARANDANG, are the designated President and Treasurer, respectively of Portland Chemicals Corporation at the time the alleged crime was committed. The names Marina C. Babasa and Pero C. Carandang were mentioned in the Information in their capacity as said officers of the Corporation yet no evidence was submitted to prove that these persons are or were still officers when the alleged crime was committed in 2014.

It is quite possible that the two aforementioned persons were not officers of the Portland Chemicals Corporation in 2014 when the crime was allegedly committed.

(b) The documents attached to the Joint Affidavit-Complaint prepared and signed by the revenue officers are not certified true copies but are mere photocopies particularly the Assessment Notices and the Preliminary Assessment Notice. Further, records show that the copies of the Assessment Notices attached to the Joint-Affidavit are not clear copies that one could no longer read the details and figures contained therein.

In view of the foregoing, this case is hereby **DISMISSED** for failure of the evidence on record to establish probable cause as provided in Section 6 (a) of Rule 112 of the Rules of Court and

Rule 9 of the Revised Rules of the Court of Tax Appeals.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice