REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	CTA EB Crim. No. 051 (CTA Crim. Case No. O-654)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
MARINA C. BABASA AND PEDRO C. CARANDANG, Respondents.	Promulgated: MAR 0 2 2020 10:55 a.m.

x- x

DECISION

Fabon-Victorino, J.:

While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.[1]

---

1 *Mendoza vs. People of the Philippines*, G.R. No. 197293, April 21, 2014.

In this Petition for Review dated April 19, 2018,[2] petitioner impugns the twin Resolutions dated December 1, 2017[3] and February 19, 2018,[4] both issued by the Court in Division in CTA Crim. Case No. O-654, which denied the issuance of warrants of arrest against respondents Marina C. Babasa (Babasa) and Pedro C. Carandang (Carandang); and accordingly dismissed the criminal case filed against them for lack of probable cause, as provided for under Section 6(a), Rule 112 of the Rules of Court.

The facts as unfurled by the record of the case:

On November 9, 2017,[5] an Information was filed against respondents Babasa and Carandang for violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC), as amended, in their capacity as President and Treasurer of Portland Chemicals Corporation (PCC). Allegedly, the two failed to pay deficiency internal revenue tax liabilities for taxable year (TY) 2010, which became due on January 25, 2014. The accusatory portion of the Information reads as follows:

> The undersigned accuses **MARINA C. BABASA** and **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, refuse and neglect as they still fail, refuse and neglect to pay their deficiency internal revenue tax liabilities for the year 2010 in the amount of ₱2,281,187.88 under Assessment/Demand Letter No. 34-10-IT-6307 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 the against or appealing the same and repeated demands made upon them to do

---

2 *Rollo,* pp. 5-16.
3 Ibid. at pp. 17-22.
4 Id. at pp. 23-26.
5 Docket (CTA Crim. Case No. O-654), pp. 6-7.

so, to the damage and prejudice of the Republic of the Philippines, in the total amount of **₱2,281,187.88**, Philippine Currency.

Contrary to law.

In support the indictment were the following documents appended to the foregoing Information:

1. Resolution dated September 25, 2017 issued by Assistant State Prosecutor Irene Coloso-Zabala, recommending that respondents Marina C. Babasa and Pedro C. Carandang be charged for violation of Section 255 of the NIRC, as amended, and for filing of the requisite Information against them;[6]

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

3. Joint-Complaint Affidavit of Revenue Officers (ROs) Jefferson T. Ocampo and Sarah H. Dolina dated July 21, 2017 with the following attachments:

    a. Assessment Notice dated January 24, 2014 for deficiency income tax (IT);
    b. Assessment Notice dated January 24, 2014 for deficiency value-added tax (VAT);
    c. Formal Letter of Demand with Details of Discrepancy dated January 24, 2014 for deficiency IT and VAT covering taxable year (TY) 2010;
    d. Letter of Authority dated August 31, 2011;
    e. Memorandum of Assignment addressed to ROs Reinhad A. Anaban and Alma Celestial Cayabyab;
    f. List of Audit Requirements dated September 1, 2011;
    g. First Request for Presentation of Record;
    h. Second Notice for Presentation of Record;
    i. Final Notice addressed to Portland Chemicals Corporation dated September 19, 2011;
    j. Notice of Informal Conference (NIC) dated July 29, 2013;
    k. Memorandum dated August 22, 2013;
    l. Assignment Slip;

---

6 Ibid. at pp. 8-10. The resolution was issued by Assistant City Prosecutor Irene Coloso-Zabala, as approved by Senior Assistant City Prosecutor Raymunda A. Cruz Apolo and Edward M. Togonon.

m. Preliminary Collection Letter dated June 9, 2014;
n. Final Notice Before Seizure dated July 4, 2014;
o. Warrant of Distraint and/or Levy;
p. Warrants of Garnishment on various banks.

On December 1, 2017,[7] the Court in Division issued the impugned Resolution, disposing the case as follows:

> 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.**

The Court in Division observed that petitioner failed to present any document showing that respondents Babasa and Carandang were the President and Treasurer of PCC at the time they purportedly failed to pay deficiency internal revenue taxes for TY 2010, which became demandable on 2014. It also noted that: 1) the documents appended to the Joint-Complaint Affidavit of the complainant were not certified true copies, but mere photocopies; and 2) the Assessment Notices attached thereto were ineligible.

On February 6, 2018, petitioner filed a *Motion for Reconsideration*[8] dated February 5, 2018, enclosing certified true copies of the documents[9] appended to the Joint Complaint-Affidavit previously noted as photocopies, PCC's General Information Sheet (GIS) for *2011,*[10] as well as PCC's 2010 Annual Income Tax Return (AITR).[11] Petitioner argued that since respondents Babasa and Carandang appeared as President and Treasurer in PCC's 2011 GIS, a copy of which was secured by the Bureau of Internal Revenue (BIR) on May 2, 2015, the two should be deemed the responsible officers of PCC in 2014, or at the time the alleged non-payment of deficiency internal revenue taxes due occurred.

---

7 See Note 3.
8 Docket (CTA Crim. Case No. O-654), pp. 66-68.
9 Annexes A to DD, ibid. at pp. 69-102.
10 Annex EE, id. at pp. 103-110.
11 Annex FF, id. at pp. 111-114.

On February 19, 2018, the Court in Division denied petitioner's bid for reconsideration in the equally impugned Resolution,[12] in this wise:

> **WHEREFORE**, the Motion for Reconsideration filed by the prosecution is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**

The Court in Division explained that a scrutiny of the GIS appended to the Motion for Reconsideration revealed that respondents Babasa and Carandang's were the president and treasurer, respectively, of PCC during the TY 2011 and not in 2014, or when the alleged failure to settle PCC's 2010 deficiency internal revenue tax liabilities occurred. Hence, this appeal.

Petitioner maintains that the submitted PCC's GIS for 2011 indicating that respondents Babasa and Carandang were its President and Treasurer, respectively, was a formidable proof that they held such positions at the time PCC failed to pay its tax liabilities in 2014. For petitioner, the said GIS for 2011 should be deemed as PCC's current since it never updated its GIS thereafter. In fine, it was able to establish a *prima facie* case against respondents Babasa and Carandang, thus, the Court in Division committed a reversible error in not issuing warrants for the arrest of the two respondents and dismissing the case filed against them.

Despite notice,[13] respondents Babasa and Carandang failed to file any comment/opposition to the present Petition.

THE RULING OF THE COURT

Enshrined in Section 2, Article III[14] of our Constitution is the inviolable right of the people to be secured in their

---

12 See Note 4.

13 *Rollo,* p. 37.

14 **Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the

✓

persons, properties and effects against unreasonable searches and seizures and that no search warrant or warrant of arrest shall issue except upon finding of probable cause.

The Constitution emphasizes the exclusive and personal responsibility of the issuing judge or magistrate to satisfy himself of the existence of probable cause for the issuance of a warrant of arrest.[15] The judge is mandated to personally examine and evaluate the resolution of the investigating prosecutor as well as all the documents in support thereof to determine the existence or non-existence of probable cause and on the basis thereof, issue a warrant of arrest and hold that person for trial.[16] If not satisfied with the submission of the prosecutor, the judge may disregard the same and require presentation of additional documents to arrive at a conclusion as to the existence of probable cause. In other words, sufficient facts must be presented to the judge issuing the warrant to convince him, that there is probable cause for believing that the person whose arrest is sought might have committed the crime charged.

Jurisprudence defined probable cause for issuance of warrant of arrest as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the person sought to be arrested is probably guilty thereof.[17]

Other authorities defined it as such reasons, supported by the facts and circumstances, as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper.

Notably, Section 6(a), Rule 112 of the Rules of Court legally allows the courts to refuse issuance of a warrant of arrest and immediately dismiss the case when the evidence on record indubitably failed to show the existence of probable cause against the accused, thus:

---

complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[15] See *AAA vs. Hon. Carbonell,* G.R. No. 171465, June 8, 2007.

[16] See *Hao vs. People of the Philippines,* G.R. No. 183345, September 17, 2014.

[17] See *Ho vs. People of the Philippines,* G.R. No. 106632, October 9, 1997.

> **Section 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 issued by the 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 the filing of the complaint of information.

A parallel provision found in Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), stating as follows:

> **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.

The foregoing provisions mandate the judge to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his/her own examination of the facts and circumstances presented by both parties.[18] The judge must satisfy himself/herself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. **If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.**[19] For the question

---

18 See *Senator De Lima vs. Hon. Guerrero, et al.,* G.R. No. 229781, October 10, 2017; and *Hao vs. People of the Philippines,* G.R. No. 183345, September 17, 2014.

19 See *Leviste vs. Hon. Alameda,* G.R. No. 182677, August 3, 2010; and *Paderanga vs. Drilon,* G.R. No. 96080, April 19, 1991. Boldfacing supplied.

whether probable cause exists or not depends upon the judgment and discretion of the judge issuing the warrant.

Tested against the above jurisprudential tenets, respondents Babasa and Carandang are being prosecuted in their respective capacity as President and Treasurer of PCC for the latter's purported transgression of Sections 255, in relation to 253(d) and 256 of the NIRC, as amended, for alleged failure to pay its 2010 deficiency internal revenue tax liabilities due on *January 25, 2014.*[20] However, the documents in support of such indictment leave much to be desired. Specifically, PCC's 2011 GIS[21] and its 2010 Annual ITR[22] merely show that respondents Babasa and Carandang's were PCC's President and Treasurer in 2011. In fact, not a single document submitted by petitioner would even hint that they were PCC's President and Treasurer at the time the alleged infraction was committed in 2014. Evidently, the documents submitted by petitioner failed to establish a *prima facie* case against respondents Babasa and Carandang, justifying the non-issuance of warrants of arrest against them.

Also wanting in persuasiveness is petitioner's posture that PCC's 2011 GIS already demonstrates that respondents Babasa and Carandang were PCC's President and Treasurer in 2014 since PCC failed to update its GIS filed with the SEC after 2011. But as discussed earlier, the submitted GIS relates to 2011 and not to 2014.

Nor could the Court take hook, line and sinker petitioner's averment that PCC's 2011 GIS stands unchanged from 2012 to the present since no amendment was effected on the same as this is a mere assumption or plain assertion without any document in support thereof. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.,* mere allegations

---

[20] 2nd Paragraph, Information dated September 12, 2017, docket (CTA Crim. Case No. O-654), p. 6.

[21] Annex EE, petitioner's Motion for Reconsideration, docket (CTA Crim. Case No. O-654), pp. 103-110.

[22] Annex FF, ibid. at pp. 111-114. PCC's 2010 Annual ITR appears to be signed by respondents Babasa and Carandang, and filed with the BIR on April 14, 2011.

are not evidence.[23] A mere assumption may not be the basis in deciding a case, or in granting a relief.[24]

Worse, the GIS of PCC subsequently submitted by petitioner were merely a photocopy of the purported document, and as such, may not be relied upon as a valid source of information, as ruled by the Court in Division.

For failure of petitioner to convince the Court in Division of the existence of probable cause, the Court *En Banc* is one with the Court in Division in dismissing the case against respondents Marina C. Babasa and Pedro C. Carandang.

WHEREFORE, the Petition for Review dated April 19, 2018 filed by the People of the Philippines is **DENIED**, for lack of merit. The twin Resolutions dated December 1, 2017 and February 19, 2018, both issued by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

23 *Republic of the Philippines vs. Tobora-Tionglico,* G.R. No. 218630, July 11, 2018; *LNS International Manpower Services vs. Padua, Jr.*, G.R. No. 179792, March 5, 2010; *Dr. De Jesus vs. Guerrero III,* G.R. No. 171491, September 4, 2009; and *Domingo vs. Robles,* G.R. No. 153743, March 18, 2005.

24 See *Spouses Guidangen vs. Wooden,* G.R. No. 174445, February 15, 2012.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice