REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JUANCHITO D. BERNARDO
PRAXEDES P. BERNARDO and
JDBEC, INCORPORATED
Located at JDBEC Incorporated,
Room 511 DFS Building, Remedios Street
corner Taft Avenue, Malate, Manila and
8F PARC House II, No. 21 EDSA
Guadalupe Nuevo, Makati City
(At Large),
Accused.

CTA Crim. Case No. O-729
(NPS Docket No. XVI-INV-10I-00275)
For: Failure to Supply Correct and Accurate Information under Sec. 255 of the National Internal Revenue Code, as amended, in relation to Sections 253(d) and 256 of the same code

Members:
DEL ROSARIO, *P.J., Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 06 2019 10:08a

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R E S O L U T I O N

On August 20, 2019, Accused filed a **Manifestation and Motion for Consolidation** manifesting that they were charged with eight (8) counts of violation of Section 255 of the 1997 National Internal Revenue Code, as amended, docketed as CTA Criminal Case Nos. O-728 and O-730 which were raffled before CTA Second Division while CTA Criminal Case Nos. O-729, O-731, O-733 and O-735 were raffled to this Court and CTA Criminal Case Nos. O-732 and O-734 were raffled to CTA Third Division.

Accused further avers that said criminal cases arose from the same set of facts involving the same parties, and in order to avoid conflicting decisions, they are requesting that the instant case be consolidated before the CTA Second Division which is hearing the criminal case with the lowest case number, namely, CTA Criminal Case No. O-728.

On July 15, 2019, the Court issued a resolution granting the prosecution a period of ten (10) days to take appropriate action with respect to the Court's observation that copies of the letter-referral of the Commissioner of the Internal Revenue (CIR) for preliminary investigation and filing of an Information, and joint complaint-affidavit were not included in the submitted documents.

Per Records Verification dated August 23, 2019, plaintiff failed to take appropriate action and submit the required letter-referral and joint complaint-affidavit.

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> SEC. 2. *Institution of criminal actions*.- All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. **In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing**. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
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> The institution of the criminal action shall interrupt the running of the period of prescription.(*Emphasis supplied*)

Without said letter-referral, this Court cannot conclude that the instant Information was indeed filed under and with the consent of the CIR.

Further, Section 7(a)[1], Rule 112 of the Rules of Court provides:

> Section 7. Records. —
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> (a) Records supporting the information or complaint. — An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.

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[1] Formerly Section 8. The former Section 5 (Resolution of investigating judge and its review) was deleted per A.M. No. 05-8-26-SC dated October 3, 2005.

Without the joint complaint-affidavit, the supposed public complainant who has personal knowledge of the factual allegation in the Information cannot attest to such facts, hence, this Court cannot determine if there is a probable cause to charge the abovenamed accused.

WHEREFORE, premises considered, Accused's Manifestation and Motion for Consolidation is hereby **NOTED** and the case is hereby **DISMISSED** pursuant to Section 7(a), Rule 112 of the Revised Rules of Court and Section 2, Rule 9 of RRCTA for lack of written authority of the CIR in the filing of the instant complaint. The motion to consolidate the instant case is moot and academic.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice