REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-578** (NPS Docket No. XVI-INV-14-B-00043) *For: Violation of Section 255 of the 1997 NIRC, as amended.*
-versus-	
FDI FOREFRONT II TRADING CORPORATION represented by MARK DOMINIC T. DE VEGA, FDI Forefront II Trading, Corporation, Baesa Industrial Terminal, 232 Quirino Highway, Baesa, Quezon City (AT-LARGE) *Accused.*	Members: *BAUTISTA, Chairperson* *FABON-VICTORINO, and* *RINGPIS-LIBAN, JJ.* **Promulgated:** SEP 14 2016 2:47 p.m.

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RESOLUTION

For resolution are the following filings from the prosecution:

1. Manifestation with Motion for Extension to Submit Compliance, with annexes, filed by registered mail on August 31, 2016;

2. Compliance filed on September 6, 2016; and

3. Amended Information filed on September 6, 2016.

On June 15, 2016, accused Mark Dominic T. De Vega was charged in an Information, which reads as follows:

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses MARK DOMINIC T. DE VEGA, President of FDI Forefront II Trading Corporation of violation of Section 255, in relation to Sections 253 (d) and

256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on or prior to April 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused Mark Dominic T. De Vega, President of FDI Forefront II Trading Corporation, a domestic corporation required by law to file value-added tax returns and to pay the corresponding VAT, did then and there, willfully, unlawfully and feloniously fail to pay deficiency Value Added Tax, in the amount of Eighty One Million, Six Hundred Ninety Eight Thousand, Six Hundred Eighty One Pesos and Thirty Four Centavos (P81,698,681.34), exclusive of interests and surcharges, for taxable year 2007, despite assessment notices, including prior and post notices and formal demands, the last being in the nature of demand before suit in April 2012, to the damage and prejudice of the government."
>
> CONTRARY TO LAW.

On July 1, 2016, the Court found that an amendment of the Information is in order prior to the determination of probable cause for the issuance of a Warrant of Arrest; that, pursuant to *Sections 6 and 11, Rule 110 of the Revised Rules of Criminal Procedure,* while it is not required by the rules that the exact date of the commission of the crime be stated, the date must be as near as possible to the actual date of the commission thereof; and that in the present Information, the date provided is "on or prior to April 2012," which is too broad considering that the prosecution itself already provided that the taxable year involved is 2007. Hence, the Court ordered the Assistant State Prosecutor *(1)* to make the necessary formal corrections in the Information; and *(2)* to review the attached Resolution, and correct inconsistencies as she sees fit.

Records reveal that the above Resolution was received by the prosecution on July 7, 2016.

On August 4, 2016, a Records Verification Report was issued by the Judicial Records Division stating that the Assistant State

Prosecutor failed to comply with the July 1, 2016 Resolution of the Court.

On August 15, 2016, the Court re-stated that the date of the commission of the crime charged in the Information, which reads: "on or prior to April 2012 and thereafter" is too broad. However, in the interest of substantial justice, it gave the Assistant State Prosecutor a final and non-extendible period of five (5) days from receipt thereof to comply with the July 1, 2016 Resolution. The Assistant State Prosecutor was likewise warned that should she fail to comply, the Court will be constrained to dismiss the case for insufficiency of the Information, without prejudice to the filing of an amended Information.

Records reveal that the August 15, 2016 Resolution was received by the prosecution on August 22, 2016. Considering that August 27, 2016 (the 5th day) and August 28, 2016 both fell on a weekend and that August 29, 2016 is a regular holiday, the Assistant State Prosecutor had until August 30, 2016 to comply with the August 15, 2016 Resolution, in relation to the July 1, 2016 Resolution.

On August 30, 2016, a Records Verification Report was issued by the Judicial Records Division stating that the Assistant State Prosecutor still failed to comply with the July 1, 2016 Resolution of the Court within the extended period.

On August 31, 2016, the Assistant State Prosecutor filed by registered mail a Manifestation with Motion for Extension to Submit Compliance dated August 26, 2016, asking for an extension of five (5) days. Therefore, she avers that she has until September 4, 2016 to comply with the July 1, 2016 Resolution.

On September 6, 2016, the Assistant State Prosecutor filed both the Compliance and the Amended Information.

In her Compliance, she avers that she filed her Manifestation with Motion for Extension to Submit Compliance on August 26, 2016; that since the last day for the extension prayed for falls on a Sunday, the submission is still within the period prayed for; that attached thereto is the Amended Information incorporating the formal corrections; and that after consultation with the Head of the Task

Force on BIR RATE Cases, it was decided that the Resolution will remain as is.

The Court notes that despite the allegation of the Assistant State Prosecutor that the Manifestation with Motion for Extension to Submit Compliance was filed on August 26, 2016, it was actually filed by registered mail on August 31, 2016, a day after the last day set by the Court for filing thereof, after *motu propio* giving her a five (5)-day extension.

Likewise, while the Assistant State Prosecutor claims that the Compliance and the Amended Information were both filed on September 5, 2016[1], these were indeed filed on September 6, 2016. Again, a day after the extended period the Assistant State Prosecutor herself prayed for.

Despite these delays the Court finds that it is a far better and more prudent to excuse these technical lapses in order to attain the ends of justice.

Therefore, the prosecution's Manifestation with Motion for Extension to Submit Compliance is hereby **GRANTED**; and the Amended Information is hereby **ADMITTED**.

However, the Court finds that the Compliance filed by the prosecution did not comply with the July 1, 2016 Resolution of the Court in relation to the approximate date of the commission of the offense, the Amended Information reads as follows (with changes underscored):

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **FDI FOREFRONT II TRADING CORPORATION**, a domestic corporation, and **MARK DOMINIC T. DE VEGA**, being the President thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007, in violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

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[1] The Compliance was dated September 5, 2016 and the prosecution avers that "today's submission is still within the five (5) day period."

> "That on or prior to April, 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused FDI FOREFRONT II TRADING CORPORATION, a domestic corporation and Mark Dominic T. De Vega, as President thereof, with registered address at Baesa Industrial Terminal, 232 Quirino Highway, Baesa, Quezon City, required by law to file Value-Added Tax returns and to pay the corresponding VAT, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency Value Added Tax, in the amount of Eighty One Million, Six Hundred Ninety Eight Thousand, Six Hundred Eighty One Pesos and Thirty Four Centavos (P81,698,681.34), exclusive of interests, surcharges and penalties, corresponding to the four (4) quarters of taxable year 2007, despite receipt of assessment notices, including prior and post notices and formal demands, the last being in the nature of demand before suit in April 13, 2012, to the damage and prejudice of the government."
>
> **CONTRARY TO LAW.**

Therefore, despite the July 1, 2016 and August 15, 2016 Resolutions of the Court relating to the date ("on or prior to April, 2012 and thereafter"), the date remains unchanged in the Amended Information. It must be emphasized that this blunder violates the right of the accused to due process.

Sections 1 and 14 of the Bill of Rights in the 1987 Philippine Constitution provide the following:

> ARTICLE III
> Bill of Rights
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> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
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> xxx xxx xxx
>
> SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.[2]

Sections 4, 6 and 11 of Rule 110, and *Section 1(b) of Rule 115, of the Revised Rules of Criminal Procedure* provide the following:

RULE 110 - PROSECUTION OF OFFENSES

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Sec. 4. *Information defined.* - An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.

xxx xxx xxx

Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

xxx xxx xxx

Sec. 11. Date of commission of the offense. - It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

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[2] Underscoring ours.

RULE 115 - RIGHTS OF ACCUSED

Section 1. Rights of accused at trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:

xxx xxx xxx

(b) To be informed of the nature and cause of the accusation against him.

xxx xxx xxx[3]

In the recent Supreme Court case of *Enrile v. People of the Philippines, et. al., G.R. No. 213455, August 11, 2015,* the Highest Tribunal ruled as follows:

B. Procedural Sufficiency of the Information

An Information is an accusation in writing charging a person with an offense, signed by the prosecutor and filed with the court. The Revised Rules of Criminal Procedure, in implementing the constitutional right of the accused to be informed of the nature and cause of the accusation against him, specifically require certain matters to be stated in the Information for its sufficiency. The requirement aims to enable the accused to properly prepare for his defense since he is presumed to have no independent knowledge of the facts constituting the offense charged.

To be considered as sufficient and valid, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

xxx The Rules do not require the Information to exactly allege the date and place of the commission of the offense, unless the date and the place are material ingredients or essential elements of the offense, or are necessary for its identification.

xxx xxx xxx

D.2.b. Approximate Dates of Commissions or Kickbacks

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[3] Underscoring ours.

> Enrile should likewise know the approximate dates, at least, of the receipt of the kickbacks and commissions, so that he could prepare the necessary pieces of evidence, documentary or otherwise, to disprove the allegations against him. We point out that the period covered by the indictment extends from "2004 to 2010 or thereabout," of which, we again stress that different overt acts constituting of the elements of Plunder took place during this period.
>
> Undoubtedly, the length of time involved - six years - will pose difficulties to Enrile in the preparation of his defense and will render him susceptible to surprises. Enrile should not be left guessing and speculating which one/s from among the numerous transactions involving his discretionary PDAF funds from 2004 to 2010, are covered by the indictment.
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> xxx xxx xxx[4]

From the above, it can be gathered that, in line with the due process requirement for the accused to be informed of the nature and cause of the accusation against him/her, the rules require that the approximate date be stated in the Information for it to be sufficient.

In the present Amended Information, the date provided ("on or prior to April, 2012 and thereafter") is too broad and can cover any day. That is - any day prior to April, 2012, the month of April, 2012, and any day after April, 2012. This will make it challenging for accused to prepare his defense and will render him susceptible to surprises, in violation of his right to due process. Considering *(1)* that the prosecution itself already provided that the taxable year involved is 2007 and *(2)* that the due dates for the filing and the payment of taxes are provided by law, the date of the commission of the crime charged can be provided in the Amended Information with more accuracy, *albeit* still an approximation.

WHEREFORE, in light of the foregoing considerations, the instant case is hereby **DISMISSED WITHOUT PREJUDICE** to the filing of an amended Information. The Assistant State Prosecutor is hereby **ORDERED TO PAY A FINE** in the amount of Five Thousand Pesos (Php5,000.00) for causing delay in the speedy disposition of this case.

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[4] Underscoring ours.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice