REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus-

ITALCAR PILIPINAS, INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL,
Accused.

CTA Crim. Case Nos. O-049, O-050 & O-051
For: Tax Evasion under Section 255 of Republic Act 8424 or Tax Reform Act of 1997, as amended, in relation to Sec. 253 (D) of the same code.

(3 Counts)

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
OCT 1 1 2013
10:15 a.m.

x- x

RESOLUTION

For resolution is the accused's *Demurrer to Evidence (Motion to Dismiss)* filed on July 29, 2013 with the prosecution's *Opposition (To Accused's Demurrer to Evidence)* filed through registered mail on August 30, 2013 and received by this Court on September 6, 2013.

Accused, ITALCAR Pilipinas Inc. (ITALCAR), Fernando T. Francisco and Antonino B. Caringal, are being charged before this Court with "violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code" under three (3) separate informations which read as follows:

CRIMINAL CASE NO. O-049

"AMENDED INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of

1997, as amended, in relation to Sec. 253 par. (D) of the same code, committed as follows:

That on or about April 15, 2000 up to the present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS INC. (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and at that time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Excise Tax Deficiency of ITALCAR for taxable year 1999 in the amount of Twenty One Million Six Hundred Forty Thousand Seven Hundred Seventeen Pesos and Fifty Two Centavos (P21,640,717.52), exclusive of penalties and charges in the amount of Fourteen Million Nine Hundred Fifty Seven Thousand Ninety Five Pesos and Nine Centavos (P14,957,095.09) or a total Excise Tax deficiency of Thirty Six Million Five Hundred Ninety Seven Thousand Eight Hundred Twelve Pesos and Sixty One Centavos (P36,597,812.61) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-050

"AMENDED INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code, committed as follows:

That on or about April 15, 2000 up to the present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS INC. (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and at that time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Value-Added Tax deficiency of ITALCAR for taxable year 1999 in the amount of Twenty Four Million Six Hundred Twenty Thousand Seven Hundred Sixty Nine Pesos and Seventy One Centavos (P24,620,769.71), exclusive of penalties and charges in the amount of Sixteen Million Seven Hundred Sixty Seven Thousand One Hundred Twenty Three Pesos and Forty Centavos (P16,767,123.40) or a total Value-Added Tax Deficiency of Forty One Million Three Hundred Eighty Seven Thousand Eight

Hundred Ninety Three Pesos and Eleven Centavos (P41,387,893.11) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-051

"AMENDED INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code, committed as follows:

That on or about April 15, 2000 up to the present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS INC. (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and at that time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Withholding Tax Deficiency of ITALCAR on compensation, expanded and final taxes for taxable year 1999 in the amount of One Million Five Hundred Thirty Seven Thousand Three Hundred Thirteen Pesos and Eight Five Centavos (P1,537,313.85), exclusive of penalties and charges in the amount of One Million Ninety Four Thousand Three Hundred Seventy Three Pesos and Forty Centavos (P1,094,373.40) or a total Withholding Tax deficiency of Two Million Six Hundred Thirty One Thousand Six Hundred Eighty Seven Pesos and Twenty Seven Centavos (P2,631,687.27) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

During trial, prosecution presented Revenue Officer (RO) Ramila Columna-Cruzado, RO Walter A. Batoon and Mr. Albino M. Galanza, then Group Supervisor (GS), who were all assigned to conduct the audit of accused ITALCAR for taxable year 1999, and Ms. Reynalda C. Catabay, then Chief of the Collection Enforcement Section, as witnesses to establish its case against accused.

In the Resolutions dated January 31, 2013[1] and July 19, 2013, the Court admitted the prosecution's documentary evidence except for Exhibits

[1] Docket, pp. 2656-2658.

"F-3", "F-4", "F-5", "R", "GG", and "KK" in CTA Crim. Case No. O-049, Exhibits "F-3", "F-4", "F-5", "R", "AA" and "EE" in CTA Crim. Case No. O-050, and Exhibits "F-3", "F-4", "F-5", "W" and "AA" in CTA Crim. Case No. O-051.

On July 29, 2013, accused filed a *Motion for Leave of Court to File and Admit Demurrer to Evidence* with attached *Demurrer to Evidence (Motion to Dismiss).* In a Resolution dated August 1, 2013, the Court granted the same and accordingly, admitted accused's Demurrer to Evidence.

The Demurrer to Evidence is anchored on the following grounds:

a. The evidence proffered by the prosecution are not admissible in evidence because (i) Letter of Authority (LA) No. 03100 dated October 19, 2000 was *void ab initio* for having been issued in violation of Section 7 of the National Internal Revenue Code (NIRC) of 1997; (ii) the directives (subpoenas)[2] issued pursuant thereto for accused ITALCAR to submit documents to the Bureau of Internal Revenue (BIR) are also void for being issued pursuant to a void LA, issued in violation of Section 5, par. B of the NIRC of 1997 and violative of accused's right to be exempt from being compelled to be a witness against himself; (iii) the Preliminary Assessment Notice (PAN) dated January 15, 2003 should be deemed void for having been issued pursuant to a void LA and issued beyond the three (3) year prescriptive period; and (iv) the Court having denied the admission of Exhibits "F-3", "F-4", "F-5", "R", "GG", and "KK" for CTA Crim. Case No. O-049, Exhibits "F-3", "F-4", "F-5", "F-9"[3], "R", "AA" and "EE" for CTA Crim. Case No. O-050, and Exhibits "F-3", "F-4", "F-5", "W" and "AA" for CTA Crim. Case No. O-051, then, the prosecution's evidence are rendered insufficient to prove the guilt of the accused beyond reasonable doubt; and

b. The informations filed against the accused are fatally defective as they lacked the approval of the Commissioner of Internal Revenue (CIR) in violation of Sections 220 and 221 of the NIRC of 1997 and Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.

In its Opposition, prosecution counter-argues that:

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[2] Exhibits "B" and "C" for the prosecution.
[3] Exhibit "F-9" for CTA Crim. Case No. O-050 was admitted per Resolution dated July 19, 2013.

a. The LA is valid pursuant to Section 13 of the NIRC of 1997; the directives for the accused to submit documents to the BIR are likewise valid pursuant to Section 5, paragraph C of the NIRC of 1997; if the accused is certain that it did not violate any tax law, then it should be convinced that the documents requested to be presented for examination/investigation will not serve as evidence against them; the PAN is valid and accused cannot invoke the defense of prescription since their case falls under Section 222 of the NIRC of 1997; and denial of some of the prosecution's evidence does not result to insufficiency of evidence; and

b. The informations filed against accused are not defective; prosecution adduced a Letter Referral wherein the CIR authorized the institution of the criminal complaint against the accused and referred to the Department of Justice for preliminary investigation and filing of information for tax evasion in court if the evidence so warrants.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[4]

Considering that these consolidated criminal cases involve willful failure to pay excise tax deficiency (Crim. Case No. O-049), willful failure to pay value-added tax (VAT) deficiency (Crim. Case No. O-050), and willful failure to pay withholding tax deficiency on compensation, expanded and final taxes (Crim. Case No. O-051) despite due notice, final assessment and demand, it is proper to resolve first whether the assessment has prescribed.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, the Supreme Court emphasized that "a void assessment bears no fruit"[5] citing *Commissioner of Internal Revenue vs. Azucena T. Reyes*[6].

The validity of the assessment, therefore, is important. If the assessment *per se* is void, there can be no willful failure to pay because the government's right to assess the taxpayer has lapsed. Consequently, the

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[4] *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.
[5] G. R. No. 185371, December 8, 2010, 637 SCRA 633, 647.
[6] G.R. No. 159694 & G.R. No. 163581, January 27, 2006, 382 SCRA 480, 396.

government cannot collect the alleged deficiency taxes due from the taxpayer.

Section 203 of the NIRC of 1997, as amended, requires that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

The date of payment of excise tax is before the release of the imported articles from the customs house [Section 131(A) of the NIRC]; the date of filing of quarterly VAT return is twenty-five (25) days following the close of each taxable quarter [Section 114(A) of the NIRC]; and the date of filing of expanded and final withholding taxes and withholding tax on compensation for large taxpayers such as the accused[7] is within twenty-five (25) days after the end of each month [Sections 2.58(A)(2)(b) and 2.81 of Revenue Regulations No. 2-98].

Counting three (3) years from the date of filing or the last day prescribed for filing of the subject tax returns, the government had until the following dates to assess the accused:

Tax Type	**Exhibit**	**Date of Filing/Last Day Prescribed**	**End of 3-year Period**
Excise Tax (latest date of withdrawal)	"Y" & "Z" (Crim. Case No. O-049), Docket, pp. 2147-2148	December 8, 1999	December 8, 2002
VAT (4th Quarter of 1999)	"F-17" (Crim. Case No. O-050), Docket, pp. 2248-2250	January 25, 2000	January 25, 2003
WT-Compensation Expanded & Final (December 1999)	"F-17" (Crim. Case No. O-051), Docket, pp. 2472-2475	January 25, 2000	January 25, 2003

Upon review of the records, it was found that the Formal Letter of Demand[8] (FLD) dated May 7, 2003 was received by the accused on May 19, 2003, hence, the BIR's right to assess accused ITALCAR for deficiency taxes has prescribed.

It is noted that both the PAN[9] and FLD did not impose a 50% penalty. Under the circumstances, there is no fraud assessment, thus, the presumption is that the 3-year prescriptive period applies.

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[7] Exhibit "V" (Crim. Case No. O-049), docket, p. 2143; Exhibit "U" (Crim. Case No. O-050); Exhibit "P" (Crim. Case No. O-051)

[8] Exhibits "FF" (Crim. Case No. O-049), docket pp. 2177-2184, "Z" (Crim. Case No. O-050), and "V" (Crim. Case No. O-051).

[9] Exhibits "EE" (Crim. Case No. O-049), docket, pp. 2169-2176, "Y" (Crim. Case No. O-050), and "U" (Crim. Case No. O-051).

For failure to comply with the 3-year period of assessment, the assessment, therefore, is void.

It is noteworthy to mention, that in demurrer to evidence, the quantum of proof required is already proof beyond reasonable doubt as held in *People vs. Sandiganbayan (First Division)*[10], as follows:

> **The demurrer to evidence in criminal cases**, such as the one at bench, is "filed after the prosecution had rested its case." As such, it **calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt**, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused."[11] (Emphasis supplied.)

Considering that there is doubt as to the validity of the assessment, this Court finds that the prosecution has not sufficiently established its case.

WHEREFORE, premises considered, accused's *Demurrer to Evidence (Motion to Dismiss)* is hereby **GRANTED**. Accordingly, Criminal Case Nos. O-049, O-050 and O-051 are hereby **DISMISSED** for failure of the prosecution to present sufficient evidence to establish the guilt of the accused.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[10] G.R. No. 164577, July 5, 2010, 623 SCRA 147.

[11] Dayap v. Sendiong, G.R. 177960, January 29, 2009, 577 SCRA 134.