REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

MASTER SPEED SHOE BAGS ENTERPRISES and RITO ALAYON JARDELIZA,
122, 2nd Floor, Pasig Public Market, Caruncho Complex, Pasig City,
Accused.

CTA CRIM. CASE NO. O-898
(NPS Docket No. XVI-INV-19C-00100)
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 22 2021 9:21 am

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RESOLUTION

In an Information filed before this Court on June 30, 2021, accused, **MASTER SPEED SHOE BAGS ENTERPRISES** and **RITO ALAYON JARDELIZA**, are charged for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about January 7, 2019 and thereafter, in Pasig City and within the jurisdiction of this Honorable Court, the accused MASTER SPEED SHOE AND BAGS ENTERPRISES, a domestic business entity, and accused RITO ALAYON JARDELIZA, being the proprietor thereof, required by law to file tax return and pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay the deficiency value-added tax (VAT) for the taxable year 2012 in the amount of One Million Forty Five Thousand Nine Hundred Eighty Pesos (Php1,045,980.00), exclusive of surcharges and interests, despite due notices and demands to pay, the latest being in the nature of Demand Before Suit issued by the Bureau of Internal Revenue on June 7, 2019, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

Attached to the Information are the following supporting documents, namely:

1. Certified True Copy of the undated Resolution signed by Assistant State Prosecutor Evee Eunice P. De Keyser, with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;[1]
2. Certified True Copy of the National Prosecution Service Investigation Data Form dated March 21, 2019;[2]
3. Certified True Copy of the Referral Letter dated March 21, 2019 addressed to the Secretary of Justice Menardo I. Guevarra from Commissioner of Internal Revenue Caesar R. Dulay;[3] and,
4. Certified True Copy of the Joint Complaint-Affidavit dated March 21, 2019, and the attached Annexes "A" to "K" inclusive of sub-markings.[4]

The Court shall evaluate the Information, the undated Department of Justice (DOJ) Resolution, and the supporting evidence, in order to determine the existence of probable cause for the issuance of a warrant of arrest (WOA) against the accused.

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> "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**. xxx." *(Boldfacing supplied)*

The test whether a warrant of arrest should be issued against an accused is clarified in *Chester De Joya vs. Judge Placido C. Marquez,*[5] *viz.:*

> "xxx **Probable cause to issue a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.** It bears remembering that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on

[1] CTA Docket, unpaginated.
[2] CTA Docket, unpaginated.
[3] CTA Docket, unpaginated.
[4] CTA Docket, unpaginated.
[5] G.R. No. 162416, January 31, 2006.

> the calculus of common sense of which all reasonable men have an abundance. xxx. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him." *(Boldfacing supplied)*

Thus, before issuing a warrant of arrest, the judge must satisfy himself or herself that based on the evidence presented, a crime has been committed and the person to be arrested is probably guilty of it.[6]

The trial court is tasked to make its own independent assessment of the case and not merely blindly accept the conclusions reached by the DOJ; lest it reduces itself to a mere rubber stamp of the prosecution.[7] Hence, the trial court is called upon to assess the merits of the case based on the affidavits and counter-affidavits, **documents, or evidence appended to the Information**, among others.

In determining the existence of probable cause, it is indispensable for this Court to determine the validity of the assessment issued against the accused to make a finding that the accused is probably guilty of the crime charged in refusing to pay a **valid, final deficiency tax assessment**; thus, meriting the issuance of WOA against the accused.

When there is a finding that the assessment notices issued against the accused are void, there is no obligation on the part of the accused to pay the internal revenue tax liabilities assessed therein. In such a case, no probable cause exists that would justify the issuance of WOA against the accused.

After a careful consideration of the allegations in the Information and personally evaluating the undated DOJ Resolution, and its supporting documents attached to the record, this Court does not find the existence of probable cause to issue a warrant of arrest against the accused Rito Alayon Jardeliza.

Accused is charged for violation of Section 255 of the NIRC of 1997, as amended, for willful failure to pay deficiency value-added tax (VAT) assessed for taxable year 2012 despite due notices and demands to pay.

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[6] *Mayor "Jong" Amado Corpus, Jr. and Carlito Samonte vs. Hon. Judge Ramon D. Pamular, et al.*, G.R. No. 186403, September 5, 2018, citing *Ho v. People*, G.R. Nos. 106632 and 106678, October 9, 1997.
[7] *Martinez vs. Court of Appeals*, G.R. No. L-112387, October 13, 1994.

A perusal of the supporting documents attached to the records shows that the assessment upon which the demand to pay deficiency VAT is based suffers from fatal infirmity. The Formal Letter of Demand (FLD) and the Assessment Notice dated November 10, 2016 assessing accused for deficiency VAT amounting to ₱2,378,816.43 failed to demand payment of the tax due within a specific period.

The FLD specifically states that accused is requested to pay its aforementioned deficiency tax liabilities in a duly authorized agent bank in which it is enrolled using the electronic BIR Payment Form within the time as shown in the enclosed assessment notice.[8] The space for the due date in the attached Assessment Notice[9] was, however, conspicuously left blank.

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[10] the Supreme Court invalidated an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "**The disputed Final Assessment Notice is not a valid assessment**.
>
> xxx xxx xxx
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*. (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**

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[8] Annex "F-4", Joint Complaint-Affidavit dated March 21, 2019, CTA Docket, unpaginated.
[9] Annex "F-1", Joint Complaint-Affidavit dated March 21, 2019, CTA Docket, unpaginated.
[10] G.R. No. 215957, November 9, 2016.

> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Boldfacing and underscoring supplied*)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.

Absent a valid demand, as in this case, the FLD and Assessment Notice for deficiency VAT are void. Being a void assessment, the same bears no fruit[11] which cannot give rise to an obligation to pay. Thus, the subsequent demands for payment in the form of the Preliminary Collection Letter dated February 24, 2017,[12] Final Notice Before Seizure dated March 6, 2017,[13] and Demand Before Suit dated January 7, 2019[14] are likewise void.

In view of the failure to state the due date for the payment of the tax liabilities, the FLD and Assessment Notice - - being fatally infirm - - are void. <u>A void assessment bears no fruit and it cannot be the basis of criminal liability for non-payment of deficiency taxes.</u>

Dismissing the case against the accused for palpable want of probable cause not only spares him the expense, rigors and embarrassment of trial, but also prevents needless waste of the Court's time and saves the precious resources of the government.[15]

WHEREFORE, the Court finds no probable cause for the issuance of a Warrant of Arrest against the accused **RITO ALAYON JARDELIZA**. Accordingly, the present case is **DISMISSED.**

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[11] *Commissioner of internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[12] Annex "G", Joint Complaint-Affidavit dated March 21, 2019, CTA Docket, unpaginated.
[13] Annex "H", Joint Complaint-Affidavit dated March 21, 2019, CTA Docket, unpaginated.
[14] Annex "K", Joint Complaint-Affidavit dated March 21, 2019, CTA Docket, unpaginated.
[15] Cabahug vs. People, G.R. No. 132816, February 5, 2002.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice