REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. O-1047** (NPS Docket No. XVI-INV-19F-00210) For: Violation of Section 255 (Failure to Pay Tax) of the 1997 NIRC, as amended
- versus -	
TRANSTECH SHUTTLE SERVICE, INC., FILSYN Compound, Brgy. Don Jose Sta. Rosa, Laguna **JOSE NAPLIS MAGCALAYO**, 128 Bulusan Street, PhVi San Jos Village LTAI Biñan, Laguna **HENRY V. LI**, and 74 AT Reyes Street Mandaluyong City **LORNA LI MAGCALAYO** 128 Bulusan Street, PhVi San Jose Village LTAI Biñan, Laguna (All at large), Accused.	*Members:* **DEL ROSARIO,** *P.J. & Chairperson,* **BACORRO-VILLENA,** and **CUI-DAVID,** *JJ.* Promulgated: OCT 0 5 2023, 4:00PM

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RESOLUTION

In the Resolution dated May 26, 2023, plaintiff was ordered to submit to the Court, within five (5) days from notice, proof of receipt by the accused of the Preliminary Assessment Notice (PAN).

In a Minute Resolution dated June 30, 2023, plaintiff was again given an additional period of five (5) days from June 12, 2023 or until June 19, 2023[1] within which to submit proof of accused's receipt of the PAN.

Records of the case disclosed that plaintiff has not complied with the abovementioned orders of the Court. Hence, the Court shall now proceed to determine whether there is probable cause to issue a warrant of arrest against the accused.

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[1] June 17, 2023 falls on a Saturday. Thus, the next working day is on June 19, 2023.

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,*[2] *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 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)*

Verily, before a warrant of arrest is issued, 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.[3]

In the Information filed on April 20, 2023, accused Transtech Shuttle Service, Inc., Jose Naplis Magcalayo, Henry V. Li, and Lorna Li Magcalayo have been charged for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Joint Complaint-Affidavit attached to the Information states that the PAN was sent to the accused via registered mail. **The registry return receipt allegedly attached to the Joint Complaint-Affidavit is not found in the case records**. Thus, there is no proof that the PAN in this case was either sent or received by accused Transtech Shuttle Service, Inc.

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[2] G.R. No. 162416, January 31, 2006.

[3] *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.

To reiterate the Resolution dated May 26, 2023, the sending of a PAN to inform the taxpayer of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.[4] Tax assessments issued in violation of the due process rights of a taxpayer are **null and void**.[5]

Given that plaintiff has not established accused's receipt of the PAN, there is no probable cause to issue a warrant of arrest against the accused.

WHEREFORE, premises considered, CTA Criminal Case No. O-1047 is hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

with Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

with Concurring Opinion
LANEE S. CUI-DAVID
Associate Justice

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[4] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[5] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.; Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

TRANSTECH SHUTTLE SERVICE, INC., JOSE NAPLIS MAGCALAYO, HENRY V. LI AND LORNA LI MAGCALAYO,
Respondents.

CTA Crim. Case No. **O-1047**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 0 5 2023; 4:00 PM

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect, it is my humble view that, at this stage of the criminal proceedings, it will be more proper for the Court to not dismiss the case outright for lack of probable cause to issue a warrant of arrest solely on the ground that plaintiff failed to submit the Registry Return Receipt for the Preliminary Assessment Notice (**PAN**) (allegedly attached to the Joint Complaint-Affidavit but not found in the records). To my mind, if the Court were to dismiss the case outright on such ground, it would effectively override the public prosecutor's determination of probable cause to hold an accused for trial.

Firstly, courts are cautioned from dismissing a case outright for lack of probable cause since, as a rule, courts cannot interfere with the public prosecutor's discretion in the conduct of preliminary investigation. In the determination of probable cause, the public prosecutor's discretion prevails over judicial discretion.[1] In keeping with this policy of non-interference, in *Personal Collection Direct Selling, Inc. v. Teresita L. Carandang*[2], the Supreme Court held that "[j]udges must proceed with caution in dismissing cases for

[1] *Marina B. Schroeder v. Attys. Mario A. Saldevar and Erwin C. Macalino*, G.R. No. 163656, 27 April 2007 citing *Atty. Edward Serapio v. Sandiganbayan (Third Division), et al.*, G.R. No. 148468, 28 January 2003.

[2] G.R. No. 206958, 08 November 2017.

lack of probable cause since the evidence before them is preliminary in nature".

In *People of the Philippines and Alynn Plezette Dy v. Court of Appeals, Billy Cerbo and Jonathan Cerbo*[3] (**Cerbo**), the Supreme Court also ruled that courts must respect the exercise of the public prosecutor's quasi-judicial discretion to determine whether or not a criminal case should be filed in court when the Information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor, *viz*:

> ...
> **The determination of probable cause during a preliminary investigation is a function that belongs to the public prosecutor. It is an *executive* function, the correctness of the exercise of which is a matter that the trial court itself does not and may not be compelled to pass upon. ...**
> ...
>
> Indeed, the public prosecutor has broad discretion to determine whether *probable cause exists and to charge those whom he or she believes to have committed the crime as defined by law*. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. ...
> ...
>
> **The determination of probable cause to hold a person for trial must be distinguished from the determination of probable cause to issue a warrant of arrest, which is [a] *judicial* function.** The judicial determination of probable cause in the issuance of arrest warrants has been emphasized in numerous cases. ...
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> Verily, a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so. **Corollary to this principle, <u>the judge should not override the public prosecutor's determination of probable cause to hold an accused for trial, on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient</u>**, as in the present case.
>
> **Indeed, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the**

[3] G.R. No. 126005, 21 January 1999; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> **latter. The reason is found in the nature and the objective of a preliminary investigation. Here, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine "whether there is sufficient ground to engender a well-founded belief that a crime ... has been committed and that the respondent is probably guilty thereof, and should be held for trial." Evidentiary matters must be presented and heard during the trial. <u>Therefore, if the information is valid on its face, and there is no showing of manifest error, grave abuse of discretion and prejudice on the part of the public prosecutor, the trial court should respect such determination.</u>**
>
> ...

From the foregoing, it would certainly be unfair for this Court to expect the plaintiff to present all the evidence needed to secure the conviction of accused Transtech Shuttle Service, Inc., Jose Naplis Magcalayo, Henry V. Li and Lorna Li Magcalayo (**accused/TSSI, J. Magcalayo, Li and L. Magcalayo**) upon the filing of the Information against them. It thus follows that, absent a finding that the Information is invalid on its face or that the public prosecutor committed manifest error or grave abuse of discretion, the Court's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrant should be issued against the accused.[4]

Probable cause is simply the existence of such facts and circumstances as would excite a belief that a crime has been committed and that the person charged is probably guilty of the said crime.[5] Before issuing warrants of arrest, judges merely personally determine the probability, not the certainty of guilt of an accused. In doing so, judges just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.[6]

As the Supreme Court held in *Hubert J. P. Webb v. Honorable Raul E. De Leon, et al.*[7], "[a] finding of probable cause needs only to rest on evidence showing that *more likely than not* a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt." Notably, the absence or presence of probable cause is to be determined from the material averments of the Information and the

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4 *The People of the Philippines v. Engr. Rodolfo Yecyec, et al.*, G.R. No. 183551, 12 November 2014.
5 *Marina B. Schroeder v. Attys. Mario A. Saldevar and Erwin C. Macalino*, supra at note 1.
6 *Hubert J. P. Webb v. Honorable Raul E. De Leon, et al.*, G.R. No. 121234, 23 August 1995.
7 Supra.

appendages thereof, as enumerated in Section 8[8], Rule 112 of the Revised Rules of Criminal Procedure.[9]

In this case, the subject the Information filed against accused TSSI, J. Magcalayo, Li and L. Magcalayo is compliant with Section 6[10], Rule 110 of the Revised Rules of Criminal Procedure. Moreover, a review of the Resolution of Assistant State Prosecutor Jeannette M. Dacpano (**ASP Dacpano**) shows that there is substantial basis to support a finding of probable cause against accused TSSI and its responsible officers.

Secondly, it is also my humble opinion that it would be premature for this Court to dismiss the case for lack of probable cause to issue a warrant of arrest *solely* on the ground that plaintiff failed to submit proof of the PAN's receipt because that would be tantamount to making a *determinative* finding *prior* to the parties' presentation of evidence during trial that there is a denial of due process in the issuance of the PAN against accused TSSI.

It bears stressing that, in *Henry T. Go v. The Fifth Division, Sandiganbayan and The Office of the Special Prosecutor, Office of the Ombudsman*[11] (**Go**), the Supreme Court ruled that "[i]t is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits."

I understand that the lack of proof of receipt of the PAN leads to the conclusion that no PAN was validly issued, which would violate accused TSSI's right to due process and render the assessment void. However, in the context of a criminal case for failure to pay tax under Section 255 of the NIRC of 1997, as amended, the absence of a valid assessment for deficiency tax only bears upon the first element of the said crime, *i.e.*, that the taxpayer is required under the NIRC of 1997, as amended, to pay any tax at the time required by law or rules and regulations. On this note, whether the subject PAN was duly served upon and received by accused TSSI or its duly authorized representatives is clearly an evidentiary matter that must be presented and heard during trial. This is best left for the Court to evaluate and resolve after a full-blown trial on the merits.

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8 Sec. 8. *Records.* — (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 of the case.

9 *People of the Philippines v. Sandiganbayan and Manuel S. Alba*, G.R. No. 144159, 29 September 2004.

10 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.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

11 G.R. No. 172602, 13 April 2007, citing *Leonardo M. Andres, et al. v. Justice Secretary Serafin R. Cuevas, et al.*, G.R. No. 150869, 09 June 2005.

In sum, following the rulings in *Cerbo* and *Go*, absent a finding that the subject Information is invalid on its face or that the public prosecutor committed manifest error or grave abuse of discretion, this Court has no authority to override the public prosecutor's determination of probable cause to hold accused TSSI, J. Magcalayo, Li and L. Magcalayo for trial, on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient for lack of proof of the PAN's receipt.

Instead of dismissing the case for lack of probable cause based on the afore-cited ground, I vote to *(1)* direct plaintiff to show cause why it should not be cited in contempt for failure to comply with the Court's lawful order[12] to submit proof of the PAN's receipt; and, *(2)* issue warrants of arrest against accused TSSI's responsible officers (*i.e.*, accused J. Magcalayo, Li and L. Magcalayo, as President, Secretary and Treasurer, respectively) based on the allegations in the Information and the other appendages thereto. Later, once accused TSSI's responsible officers have posted their bail bonds and the Court has duly acquired jurisdiction over their persons, to also set the case for Preliminary Conference, Arraignment and Pre-Trial.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[12] Resolution dated 26 May 2023 and Minute Resolution dated 30 June 2023.

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PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1047** For: Violation of Section 255, (Failure to Pay Tax) of the NIRC of 1997, as amended.
- versus -	*Members:*
TRANSTECH SHUTTLE SERVICE, INC., FILSYN Compound, Brgy. Don Jose Sta. Rosa, Laguna **JOSE NAPLIS MAGCALAYO**, 128 Bulusan Street, PhVi San Jos Village LTAI Biñan, Laguna **HENRY V. LI**, and 74 AT Reyes Street, Mandaluyong City **LORNA LI MAGCALAYO** 128 Bulusan Street, PhVi San Jos Village LTAI Biñan, Laguna (All at Large) *Accused.*	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.* Promulgated: OCT 0 5 2023; 4:00PM

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CONCURRING OPINION

CUI-DAVID, J:

I concur in the dismissal of the instant case for lack of probable cause.

Section 4, Rule 9 of the *Revised Rules of the Court of Tax Appeals* (RRCTA) provides that the Court shall evaluate the resolution of the public prosecutor and its supporting evidence, to wit:

> 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**. (*Boldfacing and underscoring supplied*)

Based on the foregoing, when an *Information* is filed with the Court, the judge makes a judicial determination of probable cause to ascertain whether a warrant of arrest should be issued against the accused.[1] Thus, before issuing a warrant of arrest, the judge must satisfy himself/herself that, based on the evidence presented, a crime has been committed, and the person to be arrested is probably guilty.[2] However, in case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence.

In the Resolution[3] dated May 26, 2023, the Court noted that the attached *Joint Complaint-Affidavit* states that the *Preliminary Assessment Notice* (PAN) was sent to the accused through registered mail, as evidenced by the attached registry return receipt. However, the said registry return receipt is not in the case records.

As pointed out in the Resolution of May 26, 2023, without the proof of receipt of the PAN mentioned above, there can be no proper determination of probable cause in the present case. Accordingly, the Court directed the prosecution to submit within five (5) days from notice the proof of receipt by the accused of the said PAN.

In its *Entry of Appearance with Motion for Extension of Time*[4] filed on June 9, 2023, the prosecution asked for an extension of five (5) days from June 12, 2023, or until June 17, 2023, to submit the proof of receipt of the PAN, which the Court granted per *Minute Resolution*[5] dated June 30, 2023.

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[1] *Arroyo v. Sandiganbayan*, G.R. No. 210488, January 27, 2020.
[2] *Corpus, Jr. v. Hon. Judge Pamular*, G.R. No. 186403, September 5, 2018.
[3] Docket, pp. 95-97.
[4] Docket, pp. 98-101.
[5] Docket, p. 105.

However, despite the extension, the prosecution still failed to submit proof of receipt of the PAN.[6]

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.[7]

Here, even after being informed that there can be no proper determination of probable cause without the proof of receipt of the aforesaid PAN, the prosecution still failed to submit the same.

At any rate, the dismissal of the instant case is without prejudice. As such, the prosecution can still refile the same, appending the accused's proof of receipt of the PAN. Another option would be to seek reconsideration of the dismissal and attach the required proof of receipt of the PAN.

All told, I vote to CONCUR with the draft Resolution.

LANEE S. CUI-DAVID
Associate Justice

[6] *Records Verification Report* dated July 12, 2023
[7] *Mendoza v. People*, G.R. No. 197293, April 21, 2014.