REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JUSTBEST SALES CORPORATION and ANGELES G. MANUEL,
(No. 621 Bagumbong Taas, Bagumbong Road, Brgy. 171 Zone 15, Caloocan City),
Accused.

CTA Crim. Case No. O-1060
(NPS Docket No. XVI-INV-19L-00509)
For: Viol. of Section 255 in relation to Sec. 253(d) and 256 of the NIRC of 1997, as amended.

Members:

MANAHAN, Chairperson and
REYES-FAJARDO *JJ.*

Promulgated:
JUL 14 2023
4:02 p.m.

x- -x

RESOLUTION

In the Resolution dated May 26, 2023, the Court directed the prosecution to submit proof of actual receipt of the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) and the original or certified true copies of Resolution dated March 12, 2020, Investigation Data Form, Letter Referral, and Complaint Affidavit dated December 13, 2019.

The Compliance filed by the prosecution on June 26, 2023 submitting certified true copies of the aforementioned documents is **NOTED**.

The prosecution alleged in its Compliance that the FAN and FLD were served to accused through registered mail and that an

Affidavit of Service of Final Assessment Notice and Formal Letter of Demand was executed as proof of service thereof.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On April 20, 2023, an Information was filed against accused **JUSTBEST SALES CORPORATION and ANGELES G. MANUEL** indicting them of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The accusatory portion of which states:

> That on or prior to March 14, 2019, and thereafter, in Caloocan ay, Philippines, and within the jurisdiction of this Honorable Court, accused MANUEL G. ANGELES, as president of Justbest Sales Corporation, and accused JUSTBEST SALES CORPORATION, a domestic corporation primarily engaged in wholesale trade and commission trade except for motor vehicles and registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 008-285-947, which earned income within the Philippines for the taxable year 2016, and therefore required to pay value added tax at the time required under the law or rules and regulations, did then and there, willfully, unlawfully and knowingly fail to pay deficiency value added tax in the amount of Two Hundred Eight Million Sixty Two Thousand Four Hundred sixty Two Pesos and Forty Nine Centavos (Php208,062,462.49), exclusive of interest and surcharge, for the taxable year 2016, despite assessment notices, including prior and post notices and demand before suit issued by the BIR on March 14, 2019, to the damage and prejudice of the Government or the Republic of the Philippines.
>
> CONTRARY TO LAW.

In support thereof, the following documents were attached to said Information:

1. Resolution dated March 12, 2020 issued by Prosecution Attorney January L. Tria-Llarena, recommending that **JUSTBEST SALES CORPORATION** and **ANGELES G. MANUEL** be charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended;

2. A letter of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused **JUSTBEST SALES CORPORATION and ANGELES G. MANUEL**; and

3. Complaint Affidavit (CA) of Mohammad Salic Macadindang, Charlote A. Abecilla, and Meribeth Joyce Danielle R. Remo dated December 13, 2019 and filed with the DOJ on December 18, 2019, with the following attachments:

a. General Information Sheet; [1]
b. Letter of Authority dated March 28, 2017;[2]
c. Notice for the Presentation/Submission of Documents/Records dated March 28, 2017;[3]
d. Reminder Before Issuance of Subpoena Duces Tecum dated April 24, 2017;[4]
e. Memorandum for the Regional Director;[5]
f. Revenue Officer's Audit Report on Value-Added Tax for the Period from January 1 to June 30, 2016;[6]
g. Preliminary Assessment Notice dated February 15, 2018;[7]
h. Details of Discrepancy; [8]
i. Affidavit of Service of Preliminary Assessment Notice dated February 22, 2018;[9]
j. Assessment Notice dated April 23, 2018;[10]
k. Formal Letter of Demand dated April 23, 2018;[11]
l. Affidavit of Service of Final Assessment Notice and Formal Letter of Demand dated May 16, 2018;[12]
m. Memorandum dated July 25, 2018 addressed to Abecilla, Charlote A.;[13]

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1 Annex "A," CA.
2 Annex "B," CA.
3 Annex "C," CA.
4 Annex "D," CA.
5 Annex "E," CA.
6 Annex "F," CA.
7 Annex "G," CA.
8 Annex "G-1," CA.
9 Annex "K," CA.
10 Annex "L," CA.
11 Annex "L-1," CA.
12 Annex "M," CA.

n. Preliminary Collection Letter dated August 2, 2018;[14]
o. Final Notice Before Seizure dated August 22, 2018;[15]
p. Memorandum dated October 11, 2019 addressed to Remo, Meribeth Joyce Danielle R.;[16]
q. Warrants of Garnishment dated October 25, 2018;[17] and
r. Demand Before Suit dated March 14, 2019.[18]

OUR RULING

This case merits outright dismissal.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[19] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

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13 Annex "N," CA.
14 Annex "O," CA.
15 Annex "P," CA.
16 Annex "Q," CA.
17 Annexes "R" to "R-22," CA.
18 Annex "S," CA.
19 G.R. Nos. 48134-37, October 18, 1990.

In the instant case, the Affidavit of Service of Final Assessment Notice and Formal Letter of Demand dated May 16, 2018 submitted by the prosecution showed that the FAN and FLD both dated April 23, 2019 were sent to accused through registered mail on April 25, 2018. However, the prosecution failed to submit any proof that the FAN and FLD were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

WHEREFORE, the instant Information docketed as CTA Crim. Case No. O-1060 is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice