REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ESTER R. ALMENDRALA,
Accused.

CTA CRIM. CASE NO. O-548

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

NOV 20 2017
1:40 p.m.

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RESOLUTION

For the Court's resolution are the following:

1. prosecution's **Motion for Reconsideration**, filed on September 18, 2017, with accused's **Comment to Prosecution's Motion for Reconsideration**, filed on October 5, 2017; and

2. accused's **Motion for Leave of Court to File Demurrer to Evidence, with attached Demurrer to Evidence**, filed on September 18, 2017, without prosecution's comment, per Records Verification dated October 9, 2017.

Prosecution seeks reconsideration of the Court's Resolution dated September 13, 2017, which denied its Motion to Set Case for Commissioner's Hearing and Extension of Time to File Formal Offer of Evidence on the ground of limited time and compounding responsibilities with the Prosecution Division in the National Office and with the Legal Division in Revenue Region No. 2 – Baguio City.

On the other hand, accused argues that the prosecution was given sufficient time to mark its exhibits and to file its formal offer of evidence. Accused also alleges that her constitutional right to speedy trial and speedy case disposition will be violated if the prosecution will be given additional time to file its formal offer of evidence.

The Court denies the prosecution's Motion for Reconsideration.

For one, the prosecution already raised similar argument to justify its Motion to Set Case for Commissioner's Hearing and for Extension of Time to File Formal Offer of Evidence which was already considered by the Court in its Resolution dated September 13, 2017.

Second, except for "P-12-a", which was marked as an original computer print-out, all exhibits of the prosecution were already marked as originals. Thus, there is no reason for the prosecution to claim that there were still some exhibits that were just provisionally marked during the Preliminary Hearing.

Lastly, the prosecution only moved for the setting of a commissioner's hearing and the extension of time to file formal offer of evidence at the time when the period to file the same had already lapsed. "It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed <u>before</u> the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court <u>powerless</u> to entertain or grant it."[1] Considering that the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.

The Court shall now discuss the accused's Motion for Leave to File Demurrer to Evidence.

Accused filed a motion for leave alleging insufficiency of evidence to sustain her indictment. She contends that the Resolution dated September 13, 2017, which ruled that the prosecution is deemed to have waived its right to file its formal offer of evidence, was received by her counsel on the same date. Hence, the accused filed her motion for leave on September 18, 2017.

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[1] *Philippine National Bank vs. Deang Marketing Corporation, et al.*, G.R. No. 177931, December 8, 2008.

Demurrer to the 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.[2] A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence. As such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case.[3]

Section 23 of Rule 119 of the Revised Rules of Criminal Procedure, which governs the filing of demurrer to evidence, reads:

> "**Section 23.** *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> **The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case**. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not

[2] *People of the Philippines vs. Go, et al.,* G.R. No. 191015, August 6, 2014.
[3] *Valencia vs. The Sandiganbayan,* G.R. No. 165996, October 17, 2005.

be reviewable by appeal or by certiorari before judgment." (*Emphasis supplied*)

Based on the foregoing, the motion for leave of court to file demurrer evidence shall specifically state its grounds and must be filed within a non-extendible period of five (5) days after the prosecution rests its case.

Records show that the Resolution which ruled on the prosecution's deemed waiver of its right to file its formal offer of evidence, was received by accused's counsel on September 13, 2017. Hence, the accused had five (5) days or until September 18, 2017 within which file her motion for leave. Therefore, the motion for leave filed by the accused on September 18, 2017 was within the prescribed period.

In view of the foregoing, accused's **Motion for Leave of Court to File Demurrer to Evidence** is **GRANTED**. Accordingly, the attached **Demurrer to Evidence**, is **ADMITTED**.

The Court shall now proceed to resolve accused's Demurrer to Evidence.

In her motion, accused states the following grounds: (1) accused Ester R. Almendrala is not the corporate and responsible officer of Jera Marketing who is liable for the crime charged; (2) there is no proof that accused has deficiency income tax for taxable year 2006 in the amount of ₱2,132,976.39, exclusive of interest and penalty; (3) there is no proof that the accused had received the final assessment notice, including prior and post notices and formal demand to pay, the last being in the nature of final notice before judicial action issued in June 21, 2010; and (d) in sum, there is gross insufficiency of evidence to sustain the indictment of the accused.

Upon close scrutiny of the records, it appears that the prosecution failed to present sufficient evidence to prove its case.

"A demurrer to evidence is an instrument for the expeditious termination of an action; thus, abbreviating judicial proceedings. It is defined as 'an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.' The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt."[4] "Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused."[5]

It should be recalled that the accused was charged for violating Section 255 of the 1997 NIRC, as amended, to wit:

> "SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos

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[4] *Heirs of Pasag, et al. vs. Sps. Parocha, et al.*, G.R. No. 155483, April 27, 2007.

[5] *Singian vs. Sandiganbayan (3rd Division), et al.*, G.R. Nos.195011-19, September 30, 2013.

(P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

In relation thereto, if the taxpayer is a corporation, the criminal liability is lodged upon its responsible officers. Sections 253 (d) and 256 of the 1997 NIRC, as amended, read:

"SEC. 253. General Provisions. —

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(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."

"SEC. 256. Penal Liability of Corporations. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

Based therefrom, in order for the prosecution to secure the conviction of accused in the instant criminal case, the following requisites must be duly established:

1. That a corporate taxpayer is required under the NIRC of 1997 to pay any tax, make a return keep any record, or supply correct and accurate information;

2. That the corporate taxpayer failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;

3. Such failure was willful; and

4. The accused is the responsible officer.

The prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scale of justice must necessarily tilt in favor of accused who must be acquitted.[6]

The prosecution claims that the accused is the President of Jera Marketing, Inc., rooting its theory on the fact that the name Ester R. Almendrala, appears in the 2008 General Information Sheet (2008 GIS) filed with the Securities and Exchange Commission.

However, the Court observed that the taxable year under scrutiny is taxable year 2006. Thus, the said 2008 GIS cannot be relied upon in confirming that the accused was the President or a responsible officer of Jera Marketing, Inc. at the time material to the incident subject of this case.

Moreover, the testimony of the prosecution witness, Ms. Liza P. Lozada, duly established that it was Mr. Joseph Almendrala, and not the accused, who was the President of Jera Marketing, Inc. in 2006. Pertinent portions of her testimony are herein quoted for ready reference, thus:

"ATTY. OBMINO-MUANA:
Q. Madame Witness, you mentioned in your Judicial Affidavit that as RO of RDO No. 57, your function includes the conduct of audit, investigation of books of accounts and other accounting records of taxpayer for internal tax revenue purposes. Now my question to you is, do your investigation include as to who is the responsible officer of the corporation?

MS. LOZADA:
A. Yes.

ATTY. OBMINO-MUANA:
Q. Now, let's go to Question No. 12, you mentioned that after the issuance of the LOA,

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[6] *Rollie Calimutan vs. People of the Philippines, et al.*, G.R. No. 152133, February 9, 2006.

you personally went to the registered address of the Jera Marketing with the checklist of requirements and 1st for presentation of records, now did you bother to check who is the President of the corporation during that time?

MS. LOZADA:
A. During that time, the President is Mr. Joseph Almendrala. In fact, he appeared in the office for meetings.

ATTY. OBMINO-MUANA:
Q. So that was in 2007, you confirmed that he was the President of the corporation?

MS. LOZADA:
A. Yes.

ATTY. OBMINO-MUANA:
Q. And were you able to talk to him?

MS. LOZADA:
A. Actually, during his visit to the office, he will meet with the Head of our office, our RDO that time.

ATTY. OBMINO-MUANA:
Q. Now, when you personally went to...*(interrupted)*

JUSTICE CASTANEDA:
Just for clarification, in that year, what was the position of the accused then?

MS. LOZADA:
A. Yes, Your Honors. I was the Revenue Officer assigned at the Assessment Section.

JUSTICE CASTANEDA:
No, I'm sorry. Tell us about the accused here, Ester Almendrala, did she occupy any position in the corporation?

MS. LOZADA:

A. That time, Your Honors, **it was Mr. Joseph Almendrala who was the President of the corporation.**

ATTY. OBMINO-MUANA:
Q. So you mean to say Mr. Witness, **in the year 2006, Mr. Joseph Almendrala was the President of Jera Marketing?**

MS. LOZADA:
A. **Yes."**[7]

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ATTY. OBMINO-MUANA:
Q. **Also aside from the GIS, did you bother to check also from the Securities and Exchange Commission the financial statements of Jera Marketing for the year 2006?**

MS. LOZADA:
A. **No. Actually, the GIS was... I was not the one who presented the GIS because my participation on the case is up to the recommendation of the assessment only.**

ATTY. OBMINO-MUANA:
Q. When was the first time have you learned that Mr. Joseph Almendrala is the President of Jera Marketing Inc.?

MS. LOZADA:
A. The first time I learned, the time the case was assigned to me and the Letter of Authority was served to the corporation.

ATTY. OBMINO-MUANA:
Q. When was that?

MS. LOZADA:
A. Sometime in 2007. October."[8] (Emphases supplied)

Not even the last witness for the prosecution, Mr. Ryan D. Florendo (Collection Officer of the Bureau of Internal Revenue) was

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[7] Pages 4 to 5, Transcript of the Stenographic Notes Taken During the Hearing on September 13, 2017.
[8] Pages 9 to 10, *Ibid.*

able to establish the participation of the accused in the crime charged. As a matter of fact, he has no personal knowledge whatsoever as to who were then the responsible officers of the Jera Marketing, Inc. at the time material to the commission of the act complained of. The following are excerpts taken from the testimony of Mr. Florendo on cross examination:

"ATTY. OBMINA-MUAÑA:

Mr. witness, you made a statement that you need to ascertain Jera Marketing responsible officers. Now, you answered that you went to the Securities and Exchange Commission (SEC) to get the GIS. Now, my question to you is, did you bother, likewise, to check the financial statement submitted to the Securities and Exchange Commission (SEC)?

WITNESS:

Ma'am, we cannot access those documents, only the GIS records.

ATTY. OBMINA-MUAÑA:

Of course, the Bureau of Internal Revenue (BIR) has a copy also of the ITR for the Corporation for the year 2006. Is that correct?

ATTY. CACAYURAN:

Objection, Your Honors. The ITR is not part of the documents identified by the witness, Your Honors. Actually, the witness number 1 identified these documents.

ATTY. OBMINA-MUAÑA:

Since you were the one who is responsible to ascertain the responsible officers of the corporation, did you also able to check among your records the income tax returns for the corporation for the year 2006?

ATTY. CACAYURAN:

Objection, Your Honors. Again, Your Honors, the income tax returns are not part of the Judicial Affidavit of the witness.

JUSTICE CASTAÑEDA:

Precisely, she is asking her. Answer the question.

ATTY. OBMINA-MUAÑA:
You signed the income tax returns of the corporation for the year 2006?

WITNESS:
No ma'am.

ATTY. OBMINA-MUAÑA:
Why?

WITNESS:
As for this case, ma'am, my part is for the summary collection only, the audit is not on my part. I am not the examiner for the Bureau. I am only a collection officer, after for the summary remedies for collection only.

ATTY. OBMINA-MUAÑA:
For you to ascertain the responsible officers of the corporation, what are the steps do you usually undertake? I mean how do you verify the same?

WITNESS:
On our part, we just wait for the memorandum of assignment signed by the RDO, if it's going to be for summary collection. What you are asking ma'am is for the examiner.

ATTY. OBMINA-MUAÑA:
So, who is the responsible officer? How do you determine that?

WITNESS:
The Revenue District Officer, ma'am, h his part here is, he signed the MOA for me to proceed with the Summary Collection.

JUSTICE CASTAÑEDA:
So, you have no participation to determine who is the responsible officers. Is it the RDO?

WITNESS:
And the examiners, Your Honors.

JUSTICE CASTAÑEDA:
And the examiner. All right. Proceed."[9] (*Emphases supplied*)

In view of the foregoing, the prosecution failed to prove that the accused was the President or at least a responsible corporate officer of Jera Marketing, Inc. at the time material to the commission of the act complained of.

Moreover, the Court shall consider no evidence which has not been formally offered. With the failure of the prosecution to formally offer its documentary evidence[10], its allegations of the commission of the crime and the accused's culpability or participation in the commission of the crime cannot, therefore, be proven. The prosecution's accusations, without supporting documentary evidence, were insufficient to convince the Court of its cause of action and instead lead it to grant the demurrer to evidence that was filed by the accused. "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."[11] The burden of proof lies on the party who makes the allegations. This, however, the prosecution failed to do.

WHEREFORE, premises considered, the prosecution's **Motion for Reconsideration**, is **DENIED** for lack of merit. On the other hand, accused's **Demurrer to Evidence**, is **GRANTED**. Accused Ester R. Almendrala is **ACQUITTED** of the offense charged for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt and without civil liability. Accordingly, the case is **DISMISSED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[9] Pages 6 to 8, Transcript of the Stenographic Notes Taken During the Hearing on May 24, 2017.
[10] Per Resolution dated September 13, 2007.
[11] *Real vs. Belo*, G.R. No. 146224, January 26, 2017.

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice