REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

MARKET SOLUTION/
BREMEL PETER R. GUIAO
In his capacity as Chairman/President of Market Solution,
Accused.

CTA CRIM. CASE NO. - O-651

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

OCT 25 2023

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7:50 a.m.

RESOLUTION

For resolution is the "Motion to Dismiss" filed by accused Bremel Peter R. Guiao (accused Guiao) on March 8, 2023, without plaintiff's comment or opposition.

In the Motion to Dismiss dated March 8, 2023, accused Guiao states that the assessment is void because accused never received the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD); that there is no proof that the assessments were received by accused, only Registry Receipts were attached to the record of the case; that there is lack of probable cause to charge accused with violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended; that the corporate name appearing in the records of the Bureau of Internal Revenue (BIR), in the Letter of Authority (LOA), PAN, Final Notice of Assessment (FAN), Preliminary Collection Notice (PCN) were all issued in the name of "Market Solutions Corporation," while the names of the accused in the Information and in the Resolution issued by the Assistant State Prosecutor appears to be "Market Solution/Bremel Peter Guiao," that there are discrepancies in the type of taxes and total amount of deficiency taxes indicated in the Information, the Referral Letter issued by the Commissioner of Internal Revenue (CIR) and the Referral Letter issued by the Assistant State Prosecutor; that the Information identifying accused Guiao as the President of "Market Solution" failed to prove that he was acting in such capacity at the time of the commission of the crime; that no documentary proof was submitted to show that he is the President of "Market Solution" when the alleged violation of Section 255 of the NIRC was committed; that the case against accused in Criminal Case No. O-650 for alleged violation of failure to pay Income Taxes was dismissed for failure of the evidence on record to establish probable cause; that although the Resolution of the Court (Second Division) in the said case is not controlling, it is persuasive and merits consideration since the said case and the instant case originated from one and the same Resolution issued by the Assistant State Prosecutor; that accused did not know of any case filed in the Court of Tax Appeals (CTA) Third Division and came to know about the instant case only when he requested for a National Bureau of Investigation (NBI) Clearance; and that upon knowledge of the pending case and as a good citizen, he immediately submitted himself to the Court by posting the required bail bond on February 28, 2023. Hence, accused Guiao prays that the Court dismiss the case filed against him.

A perusal of the record shows that BIR filed a complaint against accused Guiao, through Revenue Officers Philip A. Mayo, Marcelita D. Pardillo, and Arsenio L. Tomeldan for failure to pay the correct amount of Income Tax, Value-Added Tax (VAT) and Expanded Withholding Tax to the government for taxable year 2007, as follows:

TAX	TAX DUE	INTEREST	TOTAL
Income Tax	P36,311,582.39	P16,633,689.25	P52,945,271.64
Value-Added Tax	25,178,419.53	12,651,293.54	37,829,713.07
Expanded Withholding Tax	3,996.72	2,030.11	6,026.83

The instant case pending before the Court is for failure to pay the said VAT in the amount of P25,178,419.53, exclusive of surcharges and interests.

The Information charged against accused reads as follows:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **MARKET SOLUTION/BREMEL PETER R. GUIAO** of the offense of willful failure to pay correct value-added tax (VAT) for taxable year 2007, in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about September 7, 2015 and thereafter, in Mandaluyong City, and within the jurisdiction of this Honorable Court, the above-named accused, being the responsible officer of Market Solutions Corporation, did then and there willfully, unlawfully and feloniously fail to pay deficiency value-added tax

(VAT) with the Bureau of Internal Revenue for the taxable year 2007, despite final assessment notice, including prior and post notices and final demands to pay, the last being in the nature of Demand Before Suit (DBS) sent on September 7, 2015, to the damage and prejudice of the Government in the amount of **TWENTY FIVE MILLION ONE HUNDRED SEVENTY EIGHT THOUSAND FOUR HUNDRED NINETEEN PESOS AND 53/100 (P25,178,419.53)** tax deficiency, exclusive of surcharges and interests.

CONTRARY TO LAW."

After consideration of the supporting documents attached to the records of the case, this Court resolves to grant the Motion to Dismiss.

The Court finds that there is a discrepancy in the name of accused corporation in the caption of the case, Information and in the records of the BIR. The LOA,[1] PAN,[2] FLD,[3] Assessment Notices,[4] PCN,[5] Final Notice Before Seizure (FNBS),[6] were all issued in the name of "**Market Solutions Corporation.**" The Referral Letter[7] for filing and institution of criminal complaint signed by Commissioner Kim S. Jacinto-Henares state the name of accused corporation as "**Market Solutions Corporation**" while the name of accused in the caption of the case,[8] in the Information[9] and in the Resolution[10] issued by the Assistant State Prosecutor of the DOJ Task Force on BIR cases state the name "**Market Solution/Bremel Peter Guiao.**" The Court notes that there is no letter "s" in the word "Solution" and the word "Corporation" is missing. The said discrepancy casts doubt on the identity of accused corporation.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent.[11]

The Court notes that in the caption of the case, accused Guiao is charged in his capacity as the President of accused corporation. However, the position

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[1] Docket, p. 83.
[2] Ibid. pp. 92-95.
[3] Ibid., pp. 97-100.
[4] Ibid., pp. 101-103.
[5] Ibid., p. 105.
[6] Ibid., p. 106
[7] Ibid., pp. 74-75.
[8] Ibid., p. 6.
[9] Ibid., p. 6.
[10] Ibid., pp. 8-12.
[11] *Lozada v. Mendoza*, G.R. No. 196134, October 12, 2016, citing *Polymer Rubber Corporation v. Salamuding*, 715 Phil. 141, 150 (2013).

held by accused in the corporation was not stated in the Information. It merely stated that "the above-named accused, being the responsible officer of Market Solution Corporation." Based on records, the Court finds that there is no proof that accused Guiao was acting in said capacity during the time of the alleged commission of the crime charged.

Considering that plaintiff failed to submit proof that accused Guiao is the President of Market Solutions Corporation when the alleged violation of the tax code took place, it follows that accused Guiao cannot be held liable for the crime charged.

WHEREFORE, premises considered, the "**Motion to Dismiss**" is **GRANTED**. Accordingly, the instant case against accused corporation, **Market Solutions Corporation** and accused **BREMEL PETER R. GUIAO** is **DISMISSED without prejudice**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice