REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-983** (NPS I.S. NO: XVI-INV-18D-00077)
	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
-versus-	**Members:**
	RINGPIS-LIBAN, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ*.
LEMUEL SIBUMA CONSOLACION - at large - *Accused.*	**Promulgated:** OCT 3 1 2023 8:50 a.m.

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RESOLUTION

For the Court's resolution is the *Information* dated February 17, 2020, *filed* on December 5, 2022 by the prosecution against the accused for violation of Section 255 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended.

The Information states:

> **"INFORMATION**
>
> The undersigned Assistant State Prosecutor of the Department of Justice, Manila, hereby accuses **LEMUEL SIBULA CONSOLACION** of Willful Failure to Pay Tax under Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:
>
> > That on or about 04 August 2017 and thereafter, in San Fernando City, La Union, Philippines, and within the jurisdiction of this Honorable Court, accused **LEMUEL SIBULA CONSOLACION**, a private individual required by law to pay Income Tax, did then and there, willfully, unlawfully and knowingly fail to pay his Value-Added Tax deficiency in the amount of One Million Three Hundred Seventy Two Thousand Eight Hundred Eighty Peso and Thirty Centavos

> (Php1,372,880.30), exclusive of surcharges and interests, despite final notices and notice of collection letter, including prior and post notice and demands to pay, the last being in the nature of Final Notice and Demand Before Suit dated 04 August 2017, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW.
> Manila for Quezon City, Philippines,
> February 17, 2020.
>
> (SIGNED)
> **JAYVEE LAURENCE B. BANDONG**
> Assistant State Prosecutor
> Department of Justice, Manila
> Roll No. 59559
> IBP Lifetime No. 010413
> MCLE No. VII-0000557"[1]

Attached to the *Information*, which was approved by Prosecutor General Benedicto A. Malcontento, are the following documents in support of its allegations:

1. *Photocopy* of February 10, 2021 Department of Justice (DOJ) Resolution *denying* the motion for reconsideration of the complainant Bureau of Internal (BIR) and recommending the filing of the information for violation of Section 255 of the 1997 NIRC, as amended, instead of Section 254 since the records reveal that there was *no separate evidence to show that respondent Consolacion willfully employed a scheme or method to conceal his true income or mislead the government in order to avoid payment of taxes*;

2. *Photocopy* of February 17, 2020 DOJ Resolution, which recommended that informations be filed against respondent Lemuel <u>Sibuma</u> Consolacion for violation of Section 255 of the 1997 NIRC, as amended, and *dismissed* the charge for violation of Section 254 of the 1997 NIRC, as amended;

3. Certified true copy of the Investigation Data Form dated April 4, 2018 signed by BIR complainants Neil U. Cordero, Ted Teodulo R. Paragas, Jr. and Ernesto I. Mangabat against the respondent Lemuel <u>Sibuma</u> Consolacion.

4. Certified true copy of referral letter dated April 4, 2018 signed by Commissioner of Internal Revenue Caesar R. Dulay under Section 220 of the 1997 NIRC, which referred to the Department of Justice for preliminary investigation the Joint Compliant-Affidavit and its annexes of Revenue Officers Neil U. Cordero, Ted Teodulo R. Paragas, Jr. and

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[1] *Underscoring supplied.*

Ernesto I. Mangabat recommending the criminal prosecution of Lemuel Sibuma Consolacion.

5. Certified true copy of the Joint Compliant-Affidavit of Revenue Officers Neil U. Cordero, Ted Teodulo R. Paragas, Jr. and Ernesto I. Mangabat, dated April 4, 2018, with the attached *certified true copies* of the Annexes, which initiated the criminal complaint against Lemuel Sibuma Consolacion:

   a. Collection Notice dated November 24, 2016 – Annex A;

   b. Collection Notice dated February 15, 2017 – Annex B;

   c. Final Notice dated May 29, 2017 – Annex C;

   d. Quarterly Value-Added Tax Return (2550Q) for the 4th Quarter of Calendar Year (CY) 2016 under the name of Lemuel Sibuma Consolacion – Annex D;

   e. Quarterly Value-Added Tax Return (2550Q) for the 1st Quarter of CY 2016 under the name of Lemuel Sibuma Consolacion – Annex D-1;

   f. Quarterly Value-Added Tax Return (2550Q) for the 4th Quarter of CY 2015 under the name of Lemuel Sibuma Consolacion – Annex D-2;

   g. Certification by Priscilla D. Somera, Chief Collection Section, Revenue District No. 3, City of San Fernando, La Union dated August 8, 2017; and,

   h. Final Notice and Demand Before Suit signed by Teresita M. Dizon, Regional Director, Revenue Region No. 1, Calasiao, Pangasinan dated August 4, 2017.

In the *Resolution* dated February 2, 2023, the Court noted that the *Information* accused a person named **Lemuel Sibula Consolacion**, but the supporting documents attached to it refer to **Lemuel Sibuma Consolacion**. Furthermore, the February 10, 2021 and February 17, 2020 DOJ *Resolutions*, which were attached to the *Information* are *mere photocopies*. Accordingly, the prosecution was ordered to file (a) an *amended* information to reflect the *correct* name of the accused; *and*, (b) the *original* or *certified true copies* of the DOJ Resolutions, within five (5) days from notice.

In its *Compliance* filed on February 17, 2023, the prosecution submitted (a) an *Amended Information* dated February 16, 2023 charging **Lemuel Sibuma Consolacion** with violation of Section 255 of the 1997 NIRC; *and*, (b) the *original* or *certified true copies* of the DOJ Resolutions.

The Court noted the *Compliance* in the *Resolution* dated March 16, 2023. However, in the same *Resolution,* the Court also noted that the accused's stated address in the *Amended Information* is "Centro Building, Lingsat, San Fernando City, La Union" whereas the address indicated in the prosecution's *Compliance* is "No. 1013, Juan Luna Street, Brgy. 27, Zone 1, Tondo, Manila". Accordingly, the prosecution was ordered to provide the Court with the correct address of the accused.

Per *Records Verification* dated July 13, 2023, it was reported that the prosecution failed to comply with the *Resolution* dated March 16, 2023.

Thus, in the *Resolution* dated September 5, 2023, the prosecution was given one *last opportunity* to comply with the *Resolution* dated March 16, 2023, within five (5) days from notice, with a warning that another failure to heed the same will merit the *dismissal* of the case.

On September 18, 2023, the counsels from the Bureau of Internal Revenue (BIR) filed a *Formal Entry of Appearance with Compliance (Re: Resolution promulgated on March 16, 2023)* by registered mail, which manifested that they were Deputized Special Prosecutors from the BIR, under the supervision and control of DOJ, and attached a *Compliance (Re: Resolution promulgated on March 16, 2023).* The *Compliance (Re: Resolution promulgated on March 16, 2023)* manifested that based on the BIR Integrated Tax System (ITS) the accused has the following addresses, where he may be served letters and correspondences:

- No. 4 Purok 1, Dallangayan Este, San Fernando City, La Union (residential address);

- Ground floor, Centro Building, Lingsat, San Fernando City, La Union (business address); and,

- Room 501, Biographic Systems, Inc., Webjet Building 64, Quezon Avenue, Quezon City (business address).

On October 2, 2023, plaintiff through the Deputized Special Prosecutors filed a *Manifestation (Re: Resolution dated on September 5, 2023)* by registered mail, which informed the Court that they already filed their compliance to the September 5, 2023 *Resolution.*

The Court **NOTES** the *Formal Entry of Appearance with Compliance (Re: Resolution promulgated on March 16, 2023)* as well as the *Manifestation (Re: Resolution dated on September 5, 2023).*

The Court now resolves whether the evidence on record is sufficient to establish *probable cause.*

Although *probable cause* eludes exact and concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.[2]

The term *probable cause* does not mean "actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[3]

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[4]

Probable cause to issue a *warrant of arrest* is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused. 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.[5]

Rule 112, Section 5 of the Revised Rules of Court provides when a warrant of arrest may issue:

> "**Section 5.** *When warrant of arrest may issue.* –
>
> a) By the Regional Trial Court. - xxx, the Judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. <u>If he finds probable cause, he shall issue a warrant of arrest</u>, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause the judge may order the prosecutor to present additional evidence within five (5) days from notice xxx." (*Underscoring supplied*)

In this connection, Rule 9, Section 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) also provides:

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[2] *Marlon Dominguez y Argana v. People of the Philippines*, G.R. No. 235898, March 13, 2019.
[3] *Imingan v. The Office of the Honorable Ombudsman*, G.R. No. 226420, March 4, 2020.
[4] *Id.*
[5] *Chester de Joya v. Judge Placido C. Marquez*, et al., G.R. No. 162416, January 31, 2006.

"**Section 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." (*Underscoring supplied*)

The *Amended Information* accuses Lemuel Sibuma Consolacion of violation of Section 255 of the 1997 NIRC, which provides:

"**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 the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply 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 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 (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

This offense under Section 255 has the following *elements*:

1. The person is required under this 1997 NIRC or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct the accurate information;

2. The person *fails* to pay such tax, make such return, keep such record, or supply 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; and,

3. The failure is willful.

First, the *Amended Information* charges the accused as a private individual who was required by law to pay *Income Tax*. And yet, in this connection, it accuses him for "willfully, unlawfully and knowingly fail to pay his *Value-Added Tax* deficiency" instead. The accused cannot be charged with willful failure to pay one type of internal revenue tax if he was required by law to pay another. The facts charged in the *Amended Information* do not constitute an offense.[6]

Secondly, the *Amended Information* alleges that the accused failed to pay *Value-Added Tax* deficiency in the amount of PhP1,372,880.30. However, this amount does not tie up with the following supporting documents:

- The *Final Notice and Demand Before Suit* dated August 4, 2017, attached as *Annex F* of the original *Information,* which states that the accused had outstanding revenue tax liabilities involving PhP2,146,254.84;[7]

- The two (2) Collection Notices both dated November 24, 2016, attached as *Annexes A* and *B*, which states that the accused failed to pay the following amounts PhP280,802.47, PhP3,345.10, PhP3,345.10, PhP1,372,880.30 and PhP492,572.07;[8]and,

- Annex C-2 which showed the total basic tax e-filed but without payment as PhP3,899,985.62.

These *discrepancies* between the *Amended Information* and the supporting documents do not help establish probable cause against the accused.

More importantly, these defects violate the fundamental right of the accused to be *informed* of the nature and cause of the accusation against him found in Article III, Section 14 of the 1987 Constitution:

> "*Section 14.*
>
> (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." (*Underscoring supplied*)

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[6] Rule 117, Section 3(a), Rules of Court.
[7] Docket, p. 39.
[8] Docket, pp. 25-26.

After due consideration of the allegations in the *Amended Information* and a careful examination of the supporting documents submitted, the Court finds there is no "sufficient ground to engender a well-founded belief"[9] that a violation of Section 255 of the 1997 NIRC has been committed by the accused.

WHEREFORE, for lack of probable cause against the accused, the case is **DISMISSED** without prejudice.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[9] *Artex Development Co., Inc. v. Office of the Ombudsman*, G.R. No. 203538, June 27, 2016.