REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ALFREDO CRUZ FOLLETT,
831 F. Cayco, Brgy. 457,
Sampaloc, Manila (At-Large),
Accused.

CTA Crim. Case No. O-1113
(NPS Docket No. XVI-INV-23B-00066)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
FEB 15 2024
8:06 a.m.

x- -x

RESOLUTION

On November 13, 2023, the Court ordered plaintiff to amend the Information within five (5) days from receipt of notice, for it to address the discrepancies in the allegation and to comply with Sections 6, 8, 9, and 13 of Rule 110 of the Revised Rules of Criminal Procedure, as amended.

In compliance therewith, plaintiff filed on January 17, 2024 a *Motion to Admit Amended Information* with attached amended Information. Said amended Information reads as follows:

> The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **ALFREDO CRUZ FOLLETT** of violation of Section <u>255</u> (254) of the National Internal Revenue Code of 1997, as amended, committed as follows:
>
>> That on or about December 7, 2022, in Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a registered tax payer engaged in the buying, selling, renting, <u>leasing</u> (bearing) and operation of dwellings, with the obligation under the law to

> pay correct (file) income tax (return) for taxable year 2019, did then and there, willfully, unlawfully and feloniously fail to pay (file) his deficiency (his) income tax (return for taxable year 2019), despite final assessment and formal demand to pay and the services of several prior and past notices and demands, the latest being the Final Notice dated August 19, 2021, to the damage and prejudice of the Government in the (with) amount of Twelve Million Two Hundred Ten Thousand (Php12,210,000.00) Pesos (only), exclusive of surcharges and interest.
>
> CONTRARY TO LAW.
>
> October 4, 2023, City of Manila, Philippines.

To recall, in its *Resolution* dated November 13, 2023, the Court noted that the original Information failed to clearly and accurately allege the elements of the crime charged, as elements of both offenses under Sections 254 and 255 are indicated therein. The amended Information, as presently worded, clearly charges accused of failure to pay tax under Section 255 of NIRC.

A perusal of the amended Information also shows that it is valid on its face, having already satisfied the requisites under Section 6, Rule 110 of the Revised Rules of Criminal Procedure, as amended. However, plaintiff still failed to address the Court's initial finding that while the Information alleges that a formal demand to pay was made on the taxpayer, the *Second and Final Notice* dated August 19, 2021 only reiterated the request to submit and present the documents required for investigation. A portion of said *Notice* is quoted hereunder:

> "For mutual convenience, we reiterate our request to submit/present the required documents not later than ten days from the date of receipt hereof in order to finish this investigation in due time. Should you fail to do so, much to our regret, we will be constrained to recommend the issuance of a SUB-POENA DUCES TECUM for the compulsory production of such records.
>
> We trust that you give this matter your serious attention."

The offense of willful failure to pay tax under Section 255 of the NIRC requires the concurrence of the following elements: (1) the taxpayer is required to pay any tax; (2) the taxpayer failed to do so; and (3) such failure is willful.[1] Jurisprudence holds that such offense is committed after notice of demand for payment of deficiency taxes upon the taxpayer.[2] In the absence therefore of proof that the taxpayer received a demand for payment or any communication requiring it to pay the tax, the obligation to pay under Section 255 does not arise.

In the present case, plaintiff failed to support its allegation that a formal demand to pay was made on the taxpayer. Consequently, there is no showing of when accused's obligation to pay the taxes it allegedly failed to pay arose, or when the offense of willful failure to pay such taxes was committed.

Based on the foregoing, the Court finds no probable cause for the issuance of a warrant of arrest against the accused.

WHEREFORE, the instant Information docketed as CTA Crim. Case No. O-1113 is **DISMISSED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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[1] *Kingsam Express, Inc. v. People*, G.R. No. 254086 (Notice), Sep. 7, 2022; *Kingsam Express Incorporation and Samuel S. Santos v. People of the Philippines*, CTA EB Crim. No. 054, Oct. 24, 2019.
[2] *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 Oct 1, 1999.