REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

PAZ S. ABAD SANTOS,
Vicente Singson Encarnacion Corporation, 2/F Don Vicente Singson Bldg., Bonifacio Market, Edsa, Monumento, Caloocan City (AT-LARGE),
Accused.

CTA Crim. No. O-270
(XV-17-INV-12A-31)

For: Violation of Sec. 49 (b) now Sec. 106 (A), Sec. 57 (B), Section 175, and Sec. 24 (B) (2) of the National Internal Revenue Code of 1997 , as amended.

Members:

Acosta, *Chairperson,*
Uy, *and*
Fabon-Victorino, *JJ.*

Promulgated:

APR 13 2012 ; 4:19 p.m.

x - x

RESOLUTION

UY, *J.*:

On March 15, 2012, an Information was filed by the prosecution against accused Paz S. Abad Santos for violation of Section 49(b), now Sec. 106(A), Sec. 57(B), Sec. 175, and Sec. 24(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads as follows:

> "The undersigned Deputy City Prosecutor accuses PAZ S. ABAD SANTOS, of the crime of "violation of Sec. 49(b) now Sec. 106 (A), Sec. 57 (B), Section 175 and Sec. 24 (B) (2) of the National Internal Revenue Code of 1997, as amended committed as follows:
>
> That on or about August 22, 2008, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously fail and refused to fail tax liabilities in sums of P1,615,303.98; P583,532.67; P69,061.06; P40,837.00; and P45,000.00 as deficiency income tax, VAT, EWT, DST, Final taxes and Documentary (Stamp) tax with corresponding interest of P852,424.23; P385,652.05;

P44,076.76; P32,710.43; P28,719(.00) and surcharges of P10,209.95 and P11,250.00 all for the year 2005, despite receipt of assessment notice and demand to pay said deficiency taxes from the (C)ommissioner of the Bureau of Internal Revenue, which have become final and incontestable.

CONTRARY TO LAW.

Valenzuela City. February 23, 2012."

Attached thereto are the following documents:

1) Resolution dated February 23, 2012 issued by Deputy City Prosecutor Honesto D. Noche, and duly approved by City Prosecutor Hilda A. Fantastico-Ibuyan, recommending the indictment in court of herein accused allegedly in her capacity as treasurer of Vicente Singson-Encarnacion Corporation;

2) Investigation Data Form of the DOJ dated January 10, 2012 certified to by a certain Atty. Napoleon P. Campos, Jr.;

3) Referral letter dated November 23, 2011 issued by Regional Director Tomas C. Rosales, CEO VI of BIR Revenue Region No. 5, Caloocan City, in behalf of the Commissioner of Internal Revenue pursuant to RDAO No. 2-2007, RAO Nos. 5-83 and 10-95, addressed to the City Prosecutor, Valenzuela City, to conduct preliminary investigation against accused allegedly in her capacity as treasurer of Vicente Singson-Encarnacion Corporation; with the following attachments

a.) Affidavit dated November 23, 2011 issued by Atty. Napoleon P. Campos, Jr., Legal Officer of Revenue Region No. 5;

b.) Affidavit dated November 23, 2011 issued by Ms. Corazon L. Cruz, Mailing Clerk assigned at the Administrative Division of BIR, Revenue Region No. 5, with a copy of the Registry Receipt No. 1907 attached thereto;

c.) Assessment Notices all numbered as Assessment Notice No. 177089 covering the taxable period 2005 issued against the corporate taxpayer Vicente Singson-Encarnacion Corporation, all dated August 22, 2008, including the corresponding Formal Letters of Demand attached respectively thereto (Annexes "A" to "J", inclusive);

d.) Undated Warrant of Distraint and/or Levy with A/R Case No. 027-116-09 issued by Revenue District Officer Maridur V. Rosario, Revenue District Office No. 27, Caloocan City, against Vicente Singson-Encarnacion Corporation (Annex "K");

e.) Preliminary Collection Letter dated October 30, 2008 issued by RDO Maridur V. Rosario against Vicente Singson-Encarnacion Corporation (Annex "L"); and

f.) Final Notice Before Filing Criminal Complaint dated March 14, 2011 issued by a certain Ferdinand M. De Leon, Chief, Legal Division of BIR, Revenue Region No. 5, Caloocan City, against accused allegedly in her capacity as treasurer of Vicente Singson-Encarnacion Corporation (Annex "M").

Based on the allegations in the Information, accused Paz S. Abad Santos is charged herein for Violation of Section 49(b), now Sec. 106(A), Sec. 57(B), Sec. 175, and Sec. 24(B)(2) of the National Internal Revenue Code (NIRC) of 1997, allegedly due to her failure to pay tax liabilities in sums of P1,615,303.98, P583,532.67, P69,061.06, P40,837.00, and P45,000.00 as deficiency income tax, VAT, EWT, DST, Final taxes and DST, respectively, with corresponding interest of P852,424.23, P385,652.05, P44,076.76, P32,710.43, and P28,719.00, with surcharges of P10,209.95 and P11,250.00, all for the taxable period 2005.

Notably, these tax liabilities are corporate tax liabilities of Vicente Singson-Encarnacion Corporation, but it is misleadingly stated therein that "***the above-named accused, did then and there willfully, unlawfully and feloniously fail and refused to fail tax liabilities***" without stating that these are corporate tax liabilities. Also, the basis for the assessment of deficiency taxes for taxable year 2005 against Vicente Singson-Encarnacion Corporation was not attached to the records of this case.

On the other hand, in the Resolution dated February 23, 2012 issued by Deputy City Prosecutor Honesto D. Noche, and duly approved by City Prosecutor Hilda A. Fantastico-Ibuyan on March 12, 2012, it is alleged that said accused is being charged "in her capacity as Treasurer of Vicente Singson-Encarnacion Corporation", the supposed corporate taxpayer in the instant case.

A careful consideration of the supporting documents attached to the records of this case do not substantiate or prove that accused Paz S. Abad Santos is indeed the Treasurer and/or responsible officer of Vicente Singson-Encarnacion Corporation.

As a matter of fact, there was no mention of the name of accused as being part of the said corporate taxpayer in the following supporting documents: (a) the Assessment Notices all numbered as Assessment Notice No. 177089 covering the taxable period 2005, all dated August 22, 2008, including the corresponding Formal Letters of Demand attached thereto; (b) the undated Warrant of Distraint and/or Levy with A/R Case No. 027-116-09; and (c) the Preliminary Collection Letter dated October 30, 2008.

The name of accused Paz S. Abad Santos was only mentioned in the "Final Notice Before Filing Criminal Complaint" dated March 14, 2011 as the addressee therein. Although in the Letter dated November 23, 2011 addressed to The City Prosecutor of Valenzuela City sent by Tomas C. Rosales, CEO VI, Regional Director of the Bureau of Internal Revenue, Revenue Regional No. 5, Caloocan City, it recommended the filing of criminal charges against PAZ S. ABAD SANTOS, allegedly in her official capacity as a treasurer and/or responsible officer, there is no appropriate showing that accused Paz S. Abad Santos is indeed the Treasurer and/or responsible officer of Vicente Singson-Encarnacion Corporation.

Furthermore, the offense charged fails to relate its commission with Sections 253(d) and 256 of the NIRC of 1997, as amended, which will provide the legal basis to charge accused for non-payment of corporate tax liabilities.

All the foregoing considered, the Court finds difficulty in making a judicious determination of the existence of probable cause to hold accused liable for the commission of the offense charged herein. Consequently, the Court is left with no recourse but to dismiss the instant criminal case pursuant to Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure.

WHEREFORE, premises considered, the above captioned case is hereby **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ON LEAVE

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice