REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-650** **(NPS Docket No. XVI-INV-15J-00370)** For: Violation of Section 255 of the NIRC of 1997, as amended.
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA,** *and* **MANAHAN**, *JJ.*
MARKET SOLUTION/BREMEL PETER R. GUIAO, *Accused.*	Promulgated: OCT 03 2017 2:15 p.m.

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RESOLUTION

On September 15, 2017, an Information was filed by the prosecution against the accused Market Solution/Bremel Peter R. Guiao for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, which reads as follows:

"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 income tax 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 Solution Corporation, did then and there willfully, unlawfully and unknowingly fail to pay deficiency income tax 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 THIRTY SIX MILLION THREE HUNDRED ELEVEN THOUSAND FIVE HUNDRED EIGHTY TWO PESOS and 39/100 (P36,311,582.39) tax deficiency, exclusive of surcharges and interests."

CONTRARY TO LAW."

Attached thereto are the following documents:

1) Resolution dated January 16, 2017 issued by Assistant State Prosecutor Karla Torres Cabel, and duly approved by Senior Deputy State Prosecutor Severin H. Gana, Jr., recommending the indictment in Court of herein accused Market Solution/Bremel Peter R. Guiao;

2) Referral letter dated October 1, 2015 issued by the Commissioner of Internal Revenue, Kim Jacinto-Henares, addressed to the Secretary of Justice, Hon. Leila de Lima, to conduct preliminary investigation and file the necessary information in court against Market Solutions Corporation and its responsible corporate officer, Mr. Bremel Peter R. Guiao, with the following attachments:

   a) Joint Complaint-Affidavit of BIR revenue officers Philip A. Mayo, Marcelita D. Pardillo and Arsenio L. Tomeldan with office address at the Legal Division, RDO 43B-Pasig City and RDO 41-Mandaluyong City, 3rd Floor, BIR Building, Caruncho Avenue, Pasig City and BIR Bldg, Malamig, Mandaluyong City, respectively

   b) Preliminary Assessment Notice issued against Market Solutions Corporation for calendar year ended December 31, 2007 signed by Assistant Regional Director, Jonas DP. Amora.

   c) Assessment Notices issued against Market Solutions Corporation all dated June 30, 2010 for the taxable period 2007 for deficiency income tax, withholding tax and value-added tax with attached Details of Discrepancies and with corresponding Formal Letter of Demand (FLD) likewise dated June 30, 2010;

   d) Preliminary Collection Notice dated February 21, 2011;

   e) Final Notice Before Seizure issued against Mr. Bremel Peter R. Guiao as President of Market Solutions Corp.

f) Warrants of Distraint and/or Levy issued against Market Solutions Corporation c/o Bremel Peter Guiao

The Court will now determine probable cause for the issuance of the warrant of arrest.

Section 6 (a) Rule 112 of the Rules of Court provides, that:

> Section 6. 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.* If he finds probable cause, he shall issue a warrant of arrest, 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 7 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". (Italics ours)

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides, thus:

> "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."

The offense charged is the crime of failure to pay tax under Section 255 of the 1997 NIRC which has the following elements, to wit:

(a) That a corporate taxpayer is required under the 1997 NIRC, or by rules and regulations, to pay any tax, make a return, keep any 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.

(b) 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.

Section 253 (d) of the 1997 NIRC provides the persons to be held liable in case the crime is alleged to have been committed by a juridical person, thus:

> "Section 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 the employees* responsible for the violation."(italics ours)

Upon a careful consideration of the supporting documents attached to the records of the case, the Court finds that there is no probable cause to issue a warrant of arrest for the following reasons:

(a) There is a discrepancy in the name of the accused in the Information and the name appearing in the records of the Bureau of Internal Revenue (BIR). The Letter of Authority[1], Preliminary Assessment Notice[2] Final Assessment Notices[3], Preliminary Collection Notice[4] were all issued against **"Market Solutions Corporation"** while the names of the accused in the Information as well as in the Resolution issued by the Assistant State Prosecutor of the DOJ Task Force on BIR Cases all point to the name **"Market Solution/Bremel Peter Guiao"**. We take note that the corporate name in the Information[5] and said Resolution[6] is without the letter "s" in "Solution and without the word "Corporation".

(b) The Referral Letter[7] issued by Commissioner of Internal Revenue, Kim Jacinto-Henares referred the case to the Department of Justice for the filing of Information against **"Market Solutions Corporation"** while the Information contained the name **"Market Solution"** as the accused.

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[1] Page 83, Court Docket.
[2] Pages 92-93, Court Docket.
[3] Pages 101-103, Court Docket.
[4] Page, 105, Court Docket.
[5] Pages 6-7, Court Docket.
[6] Pages 8-11, Court Docket.
[7] Pages 74-75, Court Docket.

(c) There are discrepancies in the type of taxes and total amount of deficiency taxes indicated in the Information filed with this Court, the Referral Letter issued by the Commissioner of Internal Revenue and the Resolution issued by the DOJ Task Force on BIR cases which was prepared and signed by the Assistant State Prosecutor, Karla Torres Cabel.

(d) The Information filed against the accused identified Bremel Peter R. Guiao as the President of **"Market Solution"** but failed to prove that he was acting in said capacity at the time of the alleged commission of the crime described in Section 255 of the 1997 NIRC. No document was submitted to show that the accused Bremel Peter Guiao is the President of "**Market Solution"** when the alleged violation of Section 255 of the 1997 NIRC took place.

In view of the foregoing, this case is hereby **DISMISSED** for failure of the evidence on record to establish probable cause as provided in Section 6 (a) of Rule 112 of the Rules of Court and Rule 9 of the Revised Rules of the Court of Tax Appeals.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice