Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-678**
	For: Tax Evasion (Violation of Section 255, NIRC of 1997, as amended)
-versus-	
DARIO DESPI, in his capacity as President of D&R Aluminum & Glass Supply, Co., Accused.	Members: DEL ROSARIO, Chairperson UY, and MINDARO-GRULLA, JJ.
	Promulgated: JUL 11 2018 ; 9:52 a.m.

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RESOLUTION

The Accused, DERIO DESPI, in his capacity as President of D&R Aluminum & Glass Supply, Co., is charged in an Information before this Court, which reads as follows:

> "The undersigned, Senior Assistant City Prosecutor, accuses **DERIO DESPI, in his capacity as President of D & R Aluminum & Glass Supply Co.,** with the crime of Violation of Section 255 of the National Internal Revenue Code of 1997 as amended, committed as follows:
>
> That on or before March 21, 2014, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, in his capacity as President of D & R Aluminum & Glass Supply Co., did then and there willfully,

unlawfully and feloniously failed and refused to pay, withhold and/or remit its Tax Deficiencies (Income, Value Added, and Expanded Withholding Tax) and/or Liabilities for the taxable year/period 2008, in the total amount of PhP1,458,386.94, broken down as follows:

1) PhP991,526.67 as total deficiency Income Tax for taxable year 2008;
2) PhP416,211.87 as total deficiency Value Added Tax for taxable year 2008;
3) PhP25,648.40 as total deficiency Expanded Withholding Tax for taxable year 2008; and,
4) PhP25,000.00 as Compromise Penalty for taxable year 2008;

and still fails and refuses to do so up to the present, despite the finality and incontestability of the Assessment Notices/Formal Letters of Demand and/or proper service of demands from the Commissioner of Internal Revenue, in violation of the above stated law and to the damage and prejudice of the Philippine Government.

CONTRARY TO LAW."

It appears that the allegations in the Information filed on June 19, 2018 do not clearly show the jurisdiction of this Court insofar as the principal amount of taxes and fees is concerned.

This Court, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction[1] specifically defined under Section 7 (b) (1) of

[1] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 05, 2010.

Republic Act (R.A.) No. 1125,[2] as amended by R.A. No. 9282,[3] to wit:

"Sec. 7. Jurisdiction. - The CTA shall exercise:

xxx xxx xxx

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. **Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously

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[2] An Act Creating the Court of Tax Appeals.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized." [emphasis supplied]

Likewise, Section 3 (b) (1), Rule 4 of the 2005 Revised Rules of Court of Tax Appeals, as amended, enumerates the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

> "SEC. 3. Cases within the jurisdiction of the Court in Division. - The Court in Division shall exercise:
>
> xxx xxx xxx
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) **Original jurisdiction over all criminal offenses arising from violations of the National internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; xxx" [emphasis supplied]

Based on the foregoing, in cases arising from violations of the National Internal Revenue Code, the jurisdiction of this Court is limited to criminal offenses where the principal amount of taxes and fees claimed, is at least One Million Pesos (₱1,000,000.00), *exclusive of charges and penalties.*

Bearing in mind therefore that the jurisdiction of a court over a criminal case is determined by the allegations in the Complaint or Information,[4] it is necessary that the Information filed with this Court clearly states that the principal amount of taxes and fees claimed, is at least One Million Pesos (₱1,000,000.00), and the same is *exclusive of charges and penalties.*

In the instant criminal case, the Court notes that the Information specifically alleges that the aggregate amount of ₱1,458,386.94 in unpaid internal taxes, without specifically excluding therein the charges and penalties.

A study of the attached Formal Letter of Demand with Details of Discrepancies, albeit it being a mere photocopy, would show that the principal amount of taxes claimed for taxable year 2008 are as follows:

A. ₱631,545.65 for deficiency income tax;
B. ₱260,132.44 for deficiency value-added tax; and
C. ₱13,864.00 for deficiency expanded withholding tax

with a total principal amount of ₱905,542.09. Clearly, this Court does not have jurisdiction in this case.

Moreover, this Court's *En Banc* has ruled in *People vs. Mallari et. al.,*[5] that there is a need to produce an approval from the Commissioner of Internal Revenue (CIR), be it in the form of an authority from the said Commissioner, or original copy/ certified true copy of Revenue Delegation Authority Order (RDAO) No. 2-2007, to authorize the Regional Director to recommend the filing of criminal cases before this Court.

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[4] Hector Treñas vs. People of the Philippines, G.R. No. 195002, January 25, 2012, citing Isip vs. People, G.R. No. 170298, June 26, 2007; Teofilo Evangelista vs. People of the Philippines, G.R. No. 163267, May 05, 2010; Ramil P. Ortiz vs. Court of Appeals, G.R. No. 157370, June 08, 2007, citing Macasaet vs. People, G.R. No. 156747, February 23, 2005.
[5] CTA EB Criminal Case No. 009, May 23, 2011.

Perusal of the Information and the attached documents filed in the above-captioned case shows that the recommendation for criminal prosecution and filing of information was signed by OIC-Regional Director, RR 5 Caloocan City MYRNA S. LEONIDA, but a copy of RDAO No. 2-2007 was not produced. Likewise, the annexes attached herein, such as the Preliminary Assessment Notice, registry return notices, Final Assessment Notices, Formal Letters of Demand with Details of Discrepancies, Preliminary Collection Letter, Final Notice Before Seizure, Warrant of Distraint and Levy, and the Final Notice Before Filing Criminal Complaint, are mere photocopies.

WHEREFORE, Criminal Case No. O-678 is **DISMISSED** without prejudice.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice