

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

**ARNEL F. HIBO, MARILOU B.
CASTILLO, of ST. AUGUSTINE
SCHOOL OF NURSING-RECTO,
MANILA INC., No. 1139 Laboda
Center cor. Adelina St.,
Sampaloc, Manila.**

Accused.

CTA Crim. Case No. 0-652

(NPS Docket No. XV-07-INV-17D-02117)

For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, J.J.

Promulgated:

OCT 04 2017

2:30 p.m.

X-----X

RESOLUTION

On September 18, 2017, an Information¹ was filed before this Court by Assistant City Prosecutor Tyrone H. Almeda against herein accused, ARNEL F. HIBO, as President, and MARILOU B. CASTILLO, as Treasurer, of ST. AUGUSTINE SCHOOL OF NURSING-RECTO, MANILA INC. for failure to pay the deficiency internal revenue tax liabilities for the fiscal year ending April 30, 2007 in the amount of Php3,600,561.40, the accusatory portion of which reads:

“That on or about December 21, 2012, in the City of Manila, Philippines, the said accused **ARNEL F. HIBO**, as President and co-accused, **MARILOU B. CASTILLO**, as Treasurer, were the responsible

¹ Docket, pp. 6-7.

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officers of **ST. AUGUSTINE SCHOOL OF NURSING-RECTO, MANILA INC.**, with business address located at **No. 1139 Laboda Center cor. Adelina St., Sampaloc**, this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still fails, refuses and neglects to pay their deficiency internal revenue tax liabilities for the **fiscal year ending April 30, 2007 in the amount of Php3,600,561.40 under Assessment Notices Nos. 32-FY04/30/07-IT-1435 and 32-FY04/30/07-FBT-1436**, despite notice and service of said assessment, **Final Decision on the Disputed Assessment and Warrant of Dstraint and/or Levy dated July 31, 2013**, without appealing the same, and repeated demands made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **Php3,600,561.40**, Philippine Currency.

Contrary to law.”

Upon review of the above-quoted Information and the documents attached thereto, the Court observed that the Joint Complaint-Affidavit of Ms. Lorna A. Lazaro and Leo S. Castillo², which was the very basis of the above-quoted Information and Department of Justice’s Resolution³ dated June 15, 2017, was not properly subscribed and sworn to before the prosecutor as there was no signature over the stamped name “Senior Assistant City Prosecutor Desiree V. Dayag-Macaraeg”. Thus, the Court cannot give due course on the same pursuant to the following provisions of Section 3, Rule 110 of the Revised Rules of Criminal Procedure, in relation to Section 3, Rule 112 of the same Rules, which are herein quoted for ready reference:

Section 3 of Rule 110

“SEC. 3. *Complaint Defined.*— A complaint is a **sworn written statement** charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.”

² Ibid, pp. 13-19.

³ Id., pp. 8-10.

Section 3 of Rule 112

“Sec. 3. *Procedure.*– The preliminary investigation shall be conducted in the following manner:

(a) The **complaint** shall state the address of the respondent and **shall be accompanied by the affidavits of the complainant** and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. **The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath**, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

x x x x.”

Moreover, the mandatory requirement of having the complaint be subscribed and sworn to before the prosecutor was emphasized by no less than the Supreme Court in the case of *Visitacion L. Estodillo, et. al., and Judge Teofilo D. Baluma*⁴ when it made a distinction between information and complaint in this wise:

“There is no requirement that the information be sworn to. Otherwise, the rules would have so provided as it does in a complaint which is defined as a "sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated".

In view thereof, this Court is left with no recourse but to dismiss the instant case for non-compliance with the above-mentioned provisions of the Revised Rules of Criminal Procedure.

⁴ A.M. No. RTJ-04-1837, March 23, 2004.

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

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice