REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-1062

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ULANDAY CONSTRUCTION & DEVELOPMENT CORPORATION and its president EULOGIO S. ULANDAY,
(Km 21 Ortigas Avenue cor. Brookside San Isidro, Cainta, Rizal),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR ALEJANDRO C. DAGUISO
Department of Justice
Padre Faura Street, Ermita, Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 26, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 30, 2023.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
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ULANDAY CONSTRUCTION & DEVELOPMENT CORPORATION and its president EULOGIO S. ULANDAY,
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Accused.

CTA Crim. Case No. O-1062
(NPS Docket No. XVI-INV-19J-00364)

For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
MAY 26 2023; 1:18PM

x- x

RESOLUTION

On April 20, 2023, an Information was filed with Court, charging accused Ulanday Construction & Development Corporation and its president, Eulogio S. Ulanday, of violation of Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997 (NIRC), as amended, allegedly committed as follows:

> "That on or about January 9, 2018 and thereafter, in Cainta, Rizal, and within the jurisdiction of this Honorable Court, accused Ulanday Construction & Development Corporation, a registered taxpayer with obligation under the law to pay its correct income tax for the taxable year 2010, through its president, accused Eulogio S. Ulanday, did then and there, willfully, unlawfully and feloniously fail to pay the correct income tax with the Bureau of Internal Revenue for the taxable year 2010 in the amount of Two Million Seven Hundred Thirty Six Thousand Five Hundred Fifty Two and 94/100 Pesos only (Php2,736,552.94), exclusive of surcharges and interest, despite the service of notices and demand letters for them to pay the said tax, the latest being in the nature of Demand Before Suit dated January 9, 2018, to the damage and prejudice of the Government.

CONTRARY TO LAW.

A perusal of the Information shows that it is valid on its face for having satisfied the requisites under Section 6, Rule 110 of the Rules of Court.[1] It is also supported by certified true copies of the prosecutor's Resolution dated January 2, 2020; National Prosecution Services Investigation Data Form dated October 3, 2019; Referral Letter dated October 3, 2019 by then Commissioner of Internal Revenue (CIR) Caesar R. Dulay; and the Joint Complaint-Affidavit with certified true copies of supporting documents.

The Information alleges that the amount of Php2,736,552.94 is the basic income tax due for the year 2010, excluding surcharges and interest, which accused failed to pay despite due assessment and demand. The said amount of Php2,736,552.94, exclusive of surcharges and interest, vests original jurisdiction upon this Court.

However, the records clearly show that the instant Information should be dismissed on the ground of prescription.

Section 281 of the 1997 NIRC, as amended, states the prescription for violations of any provision of the NIRC, *viz.*:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* – All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

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[1] Rule 110 Prosecution of Offenses
Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

The term of prescription shall not run when the offender is absent from the Philippines.

The offense charged in the subject Information involves the accused's alleged willful failure to pay deficiency income tax. In jurisprudence,[2] the crime of willful failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> SEC. 2. *Institution of criminal actions.* – **All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines**. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription**. (*emphasis supplied*)

As held in the Prosecutor's Resolution, and alleged in the Joint Complaint-Affidavit, the Formal Letter of Demand/assessment notices (FLD/FAN) were sent by registered mail, and also by personal service on December 11, 2013, received by "Kimberly Diag." Examination of the attached FLD/FAN shows that there is a signature of a "Kimberly Diag" or "Kimberly Diaz" in some pages, with the date "12-11-13", though the stamp itself is illegible.

Thus, considering that the FLD/FAN was received by accused on December 11, 2013, and no protest was filed within thirty (30) days from December 11, 2013, the assessment became final and executory on January 11, 2014. Plaintiff had

[2] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, G.R. No. L-48134-37, October 18, 1990 and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777, October 1, 1999.

five (5) years from January 11, 2014, or until January 11, 2019, within which to file the Information in court.

Unfortunately, in this case, the Information was filed only on April 20, 2023, which is clearly beyond the prescriptive period.

WHEREFORE, the instant Information, docketed as CTA Crim. Case No. O-1062, is hereby **DISMISSED** by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice