REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-959**
- versus -	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
FAREAL BUILDERS, INCORPORATED and its responsible officers, **FERDINAND I. SANTOS, and LILIBETH M. SANTOS** 120-B K-8th Street, Barangay East Kamias, Quezon City, (-ALL-AT-LARGE-) Accused.	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** JJ. Promulgated: JAN 3 1 2023 8:04 a.m.

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RESOLUTION

Records show that, on December 1, 2022, the prosecution filed the Information against herein accused, **FAREAL BUILDERS, INCORPORATED** and its responsible officers, **FERDINAND I. SANTOS AND LILIBETH M. SANTOS**, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about 16 November 2012 and continuously up to the present, in Quezon City, and within the jurisdiction of this Honorable Court, said accused, Fareal Builders, Incorporated, Ferdinand I. Santos, and Lilibeth M. Santos, being then its President and Treasurer, respectively, and therefore responsible officers, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay the corporation's income tax obligations for the year 2010, *to wit*: Four Million Three Hundred Forty-One Thousand Eight Hundred Twenty-One Pesos and

Nine Centavos (P4,341,821.09), exclusive of surcharges and interest, under BIR Assessment Notice No. 040-BO55-10, did then and there, willfully, unlawfully and knowingly fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.

CONTRARY TO LAW."

Pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[1] the Court shall determine the existence or non-existence of probable cause.

Corollary thereto, the prosecution presented certified true copies of the following supporting documents for the examination of the Court:

1. Resolution, dated October 2, 2019, signed by Prosecution Attorney Christine Fatima V. Estepa, and recommended by Senior Deputy State Prosecutor Miguel F. Gudio, Jr. and Prosecutor General Benedicto A. Malcontento;

2. Investigation Data Form with NPS Docket Number XVI-INV-18D-00101;

3. Referral letter, dated April 12, 2018, of the Commissioner of Internal Revenue, Caesar R. Dulay, to the Secretary of Justice, Menardo I. Guevarra, ; and

4. Joint Complaint-Affidavit of Feliciano A. Verzosa, Jr., Joseph E. Rodriguez, and James L. Layaoen with attached annexes.

After a careful consideration of the allegations in the Information and personally examining and evaluating the supporting documents submitted, the Court finds that the right to institute the criminal action has already prescribed.

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[1] SEC. 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 Chairperson 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.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[2]

Relevantly, Section 281 of the 1997 NIRC, as amended, states:

> "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.**
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> **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.
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> **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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> The term of prescription shall not run when the offender is absent from the Philippines." (Emphasis supplied)

The above provision is clear that the period of prescription for the offense charged is five years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Relevantly, in the case of *Tupaz vs. Ulep*[3], which similarly involves the offense of failure to pay tax despite demand, the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

> "Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and**

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[2] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*, 379 Phil. 708 (2000).

[3] G.R. No. 127777, October 1, 1999.

> **demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period." (Emphasis supplied)

Based on the allegation in the Information and its supporting documents, the Formal Letter of Demand (FLD) with Details of Discrepancies and attached Assessment Notices were issued on October 16, 2012 and received by the accused on October 25, 2012. The deficiency assessments became final, executory, and demandable after the accused failed to file its protest on November 26, 2012.[4] Hence, the assessment attained finality on November 27, 2012. Furthermore, the supporting documents attached to the Information show that, after the issuance of several Warrants of Distraint and/or Levy, the complainant Bureau of Internal Revenue (BIR) subsequently issued the Demand Before Suit, dated November 3, 2017, indicating that the accused still refused to pay despite demand. It is clear that when the referral letter and complaint affidavit for preliminary investigation were filed before the Department of Justice on April 12, 2018 and the Information filed before this Court on December 1, 2022, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, had already lapsed.

WHEREFORE, in view of the foregoing, CTA Criminal Case No. O-959 is **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4] November 24, 2012 being a Saturday.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice