REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. O-733
- versus -	Members:
JUANCHITO D. BERNARDO, PRAXEDES P. BERNARDO and JDBEC Incorporated, Room 511 DFS Building, Remedios Street, corner Taft Avenue, Malate, Manila and 8F PARC House II, No. 21 EDSA Guadalupe Nuevo, Makati City (At Large) Accused.	DEL ROSARIO, *PJ*, *Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.* Promulgated: NOV 12 2019 ; 1:21pm

x- -x

RESOLUTION

Though people say, "better late than never", the law frowns upon those who assert their rights past the eleventh hour.[1] This is the quintessence of the case at bench.

On *September 23, 2010*, the Bureau of Internal Revenue (BIR) referred to the Department of Justice (DOJ) the Joint Complaint-Affidavits of Revenue Officers (ROs) Arnel B. Magbag, Jose Amor B. Dayoan, Ma. Racel B. Wacan and Amelita M. Tugade for preliminary investigation against accused' Juanchito D. Bernardo, Praxedes P. Bernardo[2] and JDBEC Incorporated (JI)'s for alleged (1) tax evation under Section 254 of the National Internal Revenue Code (NIRC) as amended; and 2) failure to supply correct and accurate information in JI's Income Tax (IT) Returns and Valued-Added Tax (VAT) Returns covering years 2006-2009 under Section 255 of the same Code.[3]

---

1 See *Dino vs. Court of Appeals,* G.R. No. 113564, June 20, 2001.
2 Collectively referred to as accused Bernardos.
3 Docket (Vol. II), pp. 1219-1230.

In the Resolution dated June 20, 2013,[4] the DOJ found probable cause to charge accused Juanchito D. Bernardo, Praxedes P. Bernardo, and JI with four (4) counts for violation of Section 255 of the NIRC, as amended, in relation to Sections 253(d) and 256 of the same Tax Code. Allegedly, accused Juanchito and Praxedes Bernardo, being JI's President; and Vice President and Treasurer, respectively, failed to supply correct and accurate information in JI's IT and VAT Returns for the periods 2006 to 2009. On the other hand, charges for tax evasion under Section 254 of the NIRC, as amended, against the same accused were dropped for the BIR's failure to establish probable cause.

Both unconvinced, the BIR[5] and accused Juanchito and Praxedes Bernardos [6] filed separate Motions for Partial Reconsideration, challenging the DOJ Resolution of June 20, 2013. The two motions were however denied in the separate Resolutions of July 30, 2015[7] and July 31, 2015.[8]

On *June 18, 2019*, an Information[9] was filed against accused JI and its President Juanchito D. Bernardo and Vice President and Treasurer Praxedes P. Bernardo, JI's responsible officers, for failure to supply correct and accurate information in JI's ITR covering TY 2008. The accusatory portion of the Information reads:

> That on or about April 15, 2009, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the forenamed accused **JUANCHITO D. BERNARDO** and **PRAXEDES P. BERNARDO** being the President and Vice-President and Treasurer, respectively, of **JDBEC Inc.,** a domestic corporation, and who are required by law, rules and regulations to supply correct and accurate information in the income tax returns of the said corporation, did then and there willfully, unlawfully and feloniously file fraudulent income tax return for taxable year 2008 for the said corporation by falsely and fraudulently stating/declaring therein that the income/receipts of the latter for the said taxable year was only P339,552,908.00 when in truth and in fact its actual income/receipts for taxable year 2008 amounted to

4 Docket (Vol. I), pp. 88-117.
5 Ibid. at pp. 80-87.
6 Id. at pp. 69-78.
7 Id. at pp. 67-68.
8 Id. at pp. 65-66.
9 Id. at pp. 8-11.

P710,353,994.00 or a gross understatement/under declaration in the amount of P370,801,806.00, or an understatement/under declaration of 109.20%, and as a result, JDBEC incurred a basic income tax deficiency for taxable year 2008 in the amount of P122,374,265.72, exclusive of interests, penalties and surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW.

This case must be dismissed.

Section 281 of the NIRC, as amended, provides that criminal infractions under the Tax Code shall prescribe after five (5) years, reckoned from the commission of tax offense and if not known, from discovery thereof *and* institution of judicial proceedings for investigation and punishment. It reads:

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.

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

Significantly, in *Lim, Sr. vs. Court of Appeals,*[10] the High Court construed Section 354 (now 281) of the NIRC, as amended, in the following fashion:

xxx. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and

[10] G.R. Nos. L-48134-37, October 18, 1990.

> proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. <u>Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.</u>
>
> xxx xxx xxx
>
> As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as <u>the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.</u>
>
> xxx xxx xxx
>
> Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation. (underscoring supplied)

The record of the present case unveils the following facts, to wit : that on September 23, 2010, the BIR referred the Joint Complaint-Affidavits of ROs Arnel B. Magbag, Jose Amor B. Dayoan, Ma. Racel B. Wacan, and Amelita M. Tugade with the DOJ for preliminary investigation. Pursuant to the foregoing provision and cited jurisprudence, the five (5)-year prescriptive period begun to run on said date. *A fortiori,* the prosecution had until September 23, 2015 to file the requisite Information with the Court. Hence, prescription had long set in when the prosecution lodged the subject Information with the Court on June 18, 2019.

Prescription of the crime or offense is the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain time.[11] Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily or grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, statutes of limitations are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.[12]

The *rationale* for prescription of actions is not that difficult to perceive - xxx to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses.[13]

As currently formulated, tax offenses are imprescriptible so long as the period from its discovery and institution of judicial proceedings for investigation and punishment, up to the filing of information in court *do not exceed five (5) years*. Contrariwise, if such institution of judicial proceedings for its investigation until the filing of requisite information in court surpasses the prescribed five (5) year-period, the government is legally deemed to have surrendered its right to take legal action against purported offenders for the violation of the Tax Code.

---

11 *Baytan vs. Commission on Elections,* G.R. No. 153945, February 4, 2003.

12 *People of the Philippines, et al. vs. Panfilo M. Lacson,* G.R. No. 149453, October 7, 2003 (Resolution on respondent's: a) Omnibus Motion; b) Motion for Reconsideration; c) Supplement to Motion for Reconsideration; and d) Motion to Set for Oral Arguments).

13 See *Sinaon vs. Soroñgon,* G.R. No. L-59879, May 13, 1985.

To this end, the silence of the Tax Code relative to the consequence of prescription of a tax offense permits recourse to the applicable provisions of the Revised Penal Code.[14] Specifically, Article 89(5) thereof declares in no uncertain terms that prescription of the offense fully obliterates the criminal liabilities of the supposed malefactors:

> **Article 89.** *How criminal liability is totally extinguished.* - Criminal liability is totally extinguished:
>
> xxx xxx xxx
>
> 5. By prescription of the crime;
>
> xxx xxx xxx

In fine, the prosecution's failure to seasonably institute the instant criminal action in Court perpetually bars it from taking legal action against accused Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC Incorporated.

WHEREFORE, CTA Criminal Case No. O-733 is hereby **DISMISSED** *ex-mero motu* on the ground of prescription.

SO ORDERED.

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

---

14 **Article 10.** *Offenses not subject to the provisions of this Code.* - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary. (underscoring supplied)