**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## ***THIRD DIVISION***

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

-*versus*-

**DENNIS SUMAYANG *y* ADORIO,**
No. 964 Lower NAPOCOR, Phase 4-B
Cogeo Dela Paz, Antipolo City, Rizal
(All At-Large),
*Accused.*

**CTA Crim. Case No. O-764**
(NPS Docket No. XVI-INV-17I-00236)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

**MANAHAN,** *Chairperson,*
**REYES-FAJARDO,** *and*
**ANGELES,** *JJ.*

Promulgated:

MAY 15 2024
2:08 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# RESOLUTION

On July 22, 2019, an Information was filed with this Court, which reads as follows:

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **DENNIS SUMAYANG *y* ADORIO,** of the offense of **Failure to Pay the Tax** in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
>
> > "That on or about **August 2017** in Antipolo City, the said accused, being the sole proprietor of D.A. Sumayang Construction, a business entity engaged in construction and registered at BIR Revenue District Office No. 45-Marikina City with Tax Identification Number 239-731-021 and whose tax liability as of the said period is within the jurisdictional amount of this Honorable Court, did then and there willfully, unlawfully and feloniously fail to pay his **INCOME TAX** deficiency liability in the amount of **FOUR MILLION ONE HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED FIVE PESOS and 63/100 (Php4,198,105.63)**, exclusive of additionnal surcharge and interest, for taxable year 2010 despite receipt of several notices and demands from the Bureau of Internal Revenues

> [sic], the latest being in the nature of Demand Before Suit dated August 9, 2017, to the damage and prejudice of the Philippine Government.
>
> **CONTRARY TO LAW**.
>
> Manila City to Quezon City, November 7, 2017."

In a *Resolution* dated August 7, 2019,[1] the Court found the existence of probable cause to hold the accused for trial and ordered the issuance of a *Warrant of Arrest*. The *Warrant of Arrest* issued on August 13, 2019.[2]

The Court subsequently noted the *Return of Warrant* dated September 16, 2019,[3] stating that the whereabouts of accused is unknown/cannot be located.[4]

On July 22, 2020, the Court issued a *Resolution* archiving the case, the dispositive portion of which reads:

> **WHEREFORE**, considering that more than six (6) months have lapsed from the time the Warrant of Arrest was issued against accused Dennis Sumayang y Adorio, and that he is still at-large, and in order that this case shall not remain pending for an indefinite period of time, this case is hereby **ARCHIVED** pursuant to Administrative Circular No. 7-A-92, dated June 21, 1993, to be revived upon his apprehension.
>
> The Director – National Bureau of Investigation; the Chief of the Philippine National Police; and the Chief of the Warrant and Subpoena Section of Antipolo City Police District are hereby directed to enforce the outstanding Warrant of Arrest issued on August 13, 2019 against accused Dennis Sumayang y Adorio, and to report to the Court the result or status thereof within thirty (30) days from receipt hereof.
>
> Further, the Commissioner of Internal Revenue is directed to exert diligent effort to ascertain the whereabouts of accused and to report the same to the Court within thirty (30) days from receipt hereof for appropriate action.
>
> **SO ORDERED**.

---

[1] Docket, p. 64.
[2] Docket, p. 70.
[3] Docket, p. 76.
[4] *Resolution* dated October 14, 2019, Docket, p. 79.

The *Records Verification* dated November 27, 2020[5] shows that there is no report or new information on the whereabouts of accused. Thereafter, on February 22, 2022, the Court noted the *Return of Warrant* dated October 23, 2021,[6] stating that the whereabouts of accused remains unknown/cannot be located.[7]

Meanwhile, the number of criminal cases archived due to the authorities' failure to cause the arrest of the accused, as well as the successive dismissal of recent cases on the ground of prescription, prompted this Court to review the archived cases to determine whether they were filed within the prescriptive period provided under Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended.

Section 281 of the 1997 NIRC, as amended, provides:

> **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.[8]

Upon revisiting the instant case, the Court finds that the same has prescribed.

The Information alleges that accused Sumayang willfully failed to pay deficiency income taxes "on or about August 2017." However, a closer scrutiny of the accompanying documents

[5] Docket, p. 104.
[6] Docket, p. 110.
[7] *Resolution* dated February 22, 2022, Docket, p. 114.
[8] *Emphasis supplied.*

reveals that the *Formal Letter of Demand*[9] was personally served at his registered address on **January 10, 2014**.[10]

Jurisprudence dictates that the offense of failure to pay deficiency tax is committed after service of notice and demand for payment upon the taxpayer, coupled with the latter's refusal to pay the tax due within the allotted period.[11] In *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*,[12] the Supreme Court explained:

> "[I]t cannot be said that the offense has been committed ... 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."[13]

Applying the foregoing in the present case, the deficiency income tax assessment against accused became final, executory, and unappealable on **February 10, 2014**—thirty (30) days from January 10, 2014—considering that no protest was filed against it. It was then that the cause of action of the Bureau of Internal Revenue (BIR) accrued. Notably, the *Formal Letter of Demand* itself indicates that the due date for payment is on February 10, 2014.

Consequently, as the offense of failure to pay tax under Section 255 of the 1997 NIRC, as amended, was committed on February 10, 2014, plaintiff had five (5) years from said date or until **February 10, 2019** within which to file the Information in Court. Rule 9, Section 2 of the Revised Rules of the Court of Tax Appeals, as amended,[14] provides:

---

[9] Annex "H-2," *Joint Complaint-Affidavit*, Docket, p. 49.
[10] *Joint Complaint-Affidavit*, Docket, p. 31.
[11] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, G.R. Nos. 48134-37, October 18, 1990.
[12] G.R. No. 127777, October 1, 1999.
[13] *Emphasis supplied.*
[14] A.M. No. 05-11-07-CTA.

> **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 ...
>
> *The institution of the criminal action shall interrupt the running of the period of prescription.*[15]

The Information in this case, however, was filed only on **July 22, 2019**—more than five (5) months after February 10, 2019. Hence, it could no longer serve to interrupt the running of the prescriptive period since the present criminal action is already time-barred.

**ACCORDINGLY**, CTA Criminal Case No. O-764 is hereby **WITHDRAWN** from the archives and **DISMISSED** by reason of prescription of the offense charged. Let the *Warrant of Arrest* issued against accused be **RECALLED** and **SET ASIDE**.

**SO ORDERED**.

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

---

[15] *Emphasis supplied.*