

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

SPECIAL FIRST DIVISION

CTA CRIM. CASE NO. O-712

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

**CONDI WILLIAM INDUSTRIAL
CORP. / DANIEL Y. CHUA,**
Accused.

To:

**PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. STATE DEPUTY PROS. RICHARD ANTHONY D. FADULLON
ASST. STATE PROS. ZENAMAR J.L. MACHACON-CAPARROS**
Department of Justice
Padre Faura Street, Ermita, Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Manila Police District
United Nations Avenue, Ermita, Manila

CHIEF, WARRANT AND SUBPOENA SECTION
Antipolo City Police Station
Sitio Tanag, Brgy. San Jose
Antipolo City

GREETINGS:

You are hereby notified by these presents that on **February 2, 2024**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 5, 2024.**

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

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

FIRST DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

-versus-

CTA Crim. Case No. O-712

Members:

**DEL ROSARIO, P.J.,
BACORRO-VILLENA, and
CUI-DAVID, JJ.**

**CONDI WILLIAM
INDUSTRIAL CORP. /
DANIEL Y. CHUA,**
Accused.

Promulgated:

FEB 02 2024 *(D: DAM)*

X- - - - -X

RESOLUTION

In the Resolution promulgated on June 11, 2020,¹ the Court found that the Warrant of Arrest issued against accused **Daniel Y. Chua** had been returned unserved since he could not be found at the given address despite diligent efforts and an Alias Warrant of Arrest was already issued. Thus, this Court's Second Division ordered that the instant case be archived so that it may not remain pending for an indefinite period.

Meanwhile, upon periodic review of archived cases and their factual antecedents, the Court finds that this case should be dismissed on the ground of prescription.

Prescription in criminal cases is a matter of substantive law.² Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.³

¹ The Resolution dated June 11, 2020, was signed by Associate Justice Juanito C. Castañeda, Associate Justice Cielito N. Mindaro-Grulla, and Associate Justices Jean Marie A. Bacorro-Villena, Docket, p. 91.

² *Reodica v. Court of Appeals*, G.R. No. 125066, 8 July 1998, 354 SCRA 90-111.

³ *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*, G.R. No. 212920, 16 September 2015, 769 SCRA 861-871

RESOLUTION

CTA Crim. Case No. O-712

People of the Philippines v. Condi William Industrial Corp. / Daniel Y. Chua

Page 2 of 6

x-----x

Section 281 of the National Internal Revenue Code (NIRC) of 1997, 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. [*Emphases and underscoring supplied.*]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals ("Lim")*,⁴ the crime of 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. The Supreme Court ruled as follows:

Inasmuch as the **final notice and demand for payment** of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period.** The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. [*Emphasis and underscoring supplied*]

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,⁵ which states:

⁴ G.R. Nos. 48134-37, October 18, 1990, 268 PHIL 680-692.

⁵ SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

RESOLUTION

CTA Crim. Case No. O-712

People of the Philippines v. Condi William Industrial Corp. / Daniel Y. Chua

Page 3 of 6

x-----x

For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.*," G.R. Nos. L-48134-37.

1. *When cause of action for willful failure to pay deficiency tax occurs.*

The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is **committed** only after receipt is coupled with refusal to pay the tax within the allotted period.

2. *Prescription under Section 280 of the Tax Code.*

- (a) **The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.** [*Emphasis supplied*]

In this case, accused was charged with violation of Section 255 of the NIRC of 1997, as amended.

In the *Joint Complaint-Affidavit*,⁶ it was alleged that the Final Assessment Notice (FAN) was issued to respondent CONDI WILLIAM on January 14, 2013; that it was personally received by the taxpayer's authorized representative; and that on July 12, 2013, a Preliminary Collection Letter was issued to respondent CONDI WILLIAM for the settlement of deficiency taxes.⁷ The FAN would have attained finality *upon the lapse* of thirty (30) days from receipt of said notice in accordance with Section 228 of the NIRC of 1997, as amended.⁸ Thus, following the allegations of plaintiff, the assessment would have become final on **February 14, 2013**.

⁶ Docket, pp. 38-44.

⁷ Joint Complaint-Affidavit, pars. 12 to 14.

⁸ SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

...
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

RESOLUTION

CTA Crim. Case No. O-712

People of the Philippines v. Condi William Industrial Corp. / Daniel Y. Chua

Page 4 of 6

x-----x

In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, *Lim*, as quoted above, is instructive that it is the filing of the criminal information that must fall within the five-year prescriptive period.

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.

This Court is aware that the *Lim* case interpreted Section 354 of the 1939 Tax Code.⁹ However, such provision was subsequently reproduced in Section 281 of the NIRC of 1997, as amended. We compare:

Section 354 of the 1939 Tax Code	Section 281 of the NIRC of 1997
<i>SECTION 354. Prescription for Violations of Any Provisions of this Code. - All violations of any provisions of this Code shall prescribe after five years.</i>	<i>SECTION 281. Prescription for Violations of any Provision of this Code. - All violations of any provision of this Code shall prescribe after five (5) years.</i>
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.	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 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.	The term of prescription shall not run when the offender is absent from the Philippines

⁹ Commonwealth Act No. 466, June 15, 1939.

RESOLUTION

CTA Crim. Case No. O-712

People of the Philippines v. Condi William Industrial Corp. / Daniel Y. Chua

Page 5 of 6

X-----X

Considering that the wording of Section 354 of the 1939 NIRC was adopted and reproduced in Section 281 of the 1997 NIRC, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in *Lim*.¹⁰

Thus, pursuant to *Lim*, plaintiff had five (5) years counted from February 14, 2013, or until **February 14, 2018**, to file the *Information* before the Court. The *Information* dated December 18, 2018 was filed with this Court only on **March 18, 2019**.

Clearly, when the present *Information* was filed on **March 18, 2019**, the government's right to institute a criminal action against accused had already prescribed for *more than one (1) year*.

Even if the period is counted from the issuance of the Preliminary Collection Notice, plaintiff would have five (5) years from July 12, 2013, or until **July 12, 2018**, to file the *Information* in Court. Hence, the filing of the *Information* on **March 18, 2019**, is beyond the prescriptive period.

In *Romualdez v. Marcelo*,¹¹ the Supreme Court thus discussed:

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 and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; ...that from henceforth[,] he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence[,] it is that statutes of limitation 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. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks

¹⁰ *People v. Castillo*, CTA EB Crim. Case No. 053 (CTA Crim Case No. O-663) (Resolution), June 8, 2021.

¹¹ G.R. Nos. 165510-33 (Resolution), July 28, 2006, 529 PHIL 90-119.

RESOLUTION

CTA Crim. Case No. O-712

People of the Philippines v. Condi William Industrial Corp. / Daniel Y. Chua

Page **6** of **6**

X-----X

imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."

Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. Prescription emanates from the liberality of the State. ...Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.

WHEREFORE, premises considered, CTA Crim Case No. O-712 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** on the ground of prescription of the offense charged.

The Alias Warrant of Arrest issued against accused is hereby **RECALLED** and **SET ASIDE**.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice