REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. **O-1082**
	For: Violation of Section 255 of the NIRC of 1997, as amended
- versus -	Members:
	DEL ROSARIO, *P.J.*, *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
PGU GENERAL MERCHANDISE, INC., FOOK SEONG YONG and ROCELLE FRANCISCO, Accused.	Promulgated: OCT 12 2023; 8:15AM

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RESOLUTION

On 10 August 2023, an Information was filed against accused PGU General Merchandise, Inc., Fook Seong Yong and Rocelle Francisco (**accused**) for violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The Information reads:

> ...
> That in or about September 2015 and thereafter, in the City of Manila within the jurisdiction of this Honorable Court, accused PGU GENERAL MERCHANDISE, INC., a registered VAT taxpayer of BIR RDO No. 33-City of Manila, with Tax Identification Number 245-291-198, with obligation under the law to file and pay the corresponding Income Tax (IT) Return for taxable year/period 01 January to 31 December 2008, and accused FOOK SEONG YONG and ROCELLE FRANCISCO, its president and treasurer, respectively, and responsible officers, did then and there, willfully and knowingly fail to pay deficiency income tax for the said taxable year in the amount of Php9,950,710.79, exclusive of surcharges and interest, despite final assessment notice, including prior and post notices and formal

> demands to pay, the last being in the nature of final notice for them to pay the said tax, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW.
>
> . . .

Pursuant to Section 4[1] of Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the Court shall determine the existence or non-existence of probable cause for the issuance of a warrant of arrest and, upon service thereof to the accused, acquire jurisdiction over the person of the latter. In the said provision, the Court shall go over the preliminary pieces of evidence submitted by the plaintiff and accordingly attached to the Information filed against the accused. In the same provision, it is also provided that the Court may dismiss the case if the evidence fails to establish probable cause.

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

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 NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
> **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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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. <u>The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.</u> 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. (Emphasis and underscoring supplied)

2 *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, et al.*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division), et al.* G.R. No. 109376, 20 January 2000.

> **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.[3]
>
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) 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.

Based on the foregoing provision, the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[4] The <u>second paragraph</u> of Section 281 of the NIRC of 1997, as amended, speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

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[3] Italics in the original text and emphasis supplied.

[4] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[5] (**Lim**), the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended), to wit:

> ...
>
> **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.
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> ...
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> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] 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 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. **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.**
>
> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] 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 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.**
>
> ...
>
> **Unless amended by the legislature, Section 354 [now, Section 281] 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**

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

> **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.[6]
>
> . . .

Following *Lim* and considering that the charges brought against the accused are for willful failure to pay taxes, the day of the crime's commission would be the day immediately after the expiration of the period to pay as contained in the final demand issued by the Bureau of Internal Revenue (**BIR**). Pursuant to Section 281[7] of the NIRC of 1997, as amended, in such cases, the five 5-year period shall begin to run from the date of the offense's commission and shall only be interrupted by filing an Information for the offense in court.

The present Information dated 03 September 2019 alleging commission date of sometime in September 2015, was filed with the Court only on **10 August 2023**. Thus, the right of the government to institute the case against the accused has already prescribed considering that almost eight (8) years had already elapsed from the alleged date of the crimes' commission to the filing of the Information on 10 August 2023. Therefore, it is only just that the present criminal Information be dismissed.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[8] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information within the 5-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, this case is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

ON OFFICIAL BUSINESS
ROMAN G. DEL ROSARIO
Presiding Justice

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6 Citation omitted, emphasis supplied and italics in the original text.
7 Supra at pp. 2-3.
8 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino, et al.*, G.R. No. L-28841, 24 June 1983.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice