REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

LOGISTICS.COM CORPORATION, JOVAN G. TRIAS, ARMAN R. ONG and ERMA O. AUNARIO,
Diezmo Road, Pulo, Cabuyao City, Laguna,
Accused.

CTA Crim. Case No. O-973
(NPS Docket No. XVI-INV-19B-00066)
For: Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, ***PJ, Chairperson***
MANAHAN, and
REYES-FAJARDO ***JJ.***

Promulgated:

JAN 30 2023 ; 2:47 P.M.

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RESOLUTION

On December 5, 2022, an Information was filed against accused **LOGISTICS.COM CORPORATION, JOVAN G. TRIAS, ARMAN R. ONG,** and **ERMA O. AUNARIO,** indicting them of violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended. The accusatory portion of which states:

> That on or about March 16, 2016 and thereafter, in Cabuyao City, Laguna, and within the jurisdiction of this Honorable Court, accused Logistics.com Corporation, a registered taxpayer engaged in the retail business of freight and cargo forwarders, hauling, carrying, handling, warehousing, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise, with obligation under the law to pay the correct income tax for the taxable year 2010, through its president, accused Jovan G. Trias, its general manager, accused Arman R. Ong, and treasurer, accused Erma O. Aunario, did then and there, willfully, unlawfully, and feloniously fail to pay its correct income tax with the Bureau of Internal Revenue for taxable year 2010 in the amount

of Thirty One Million Two Hundred Seventy Two Thousand Nine Hundred Sixty Six and 72/100 Pesos (Php31,272,966.72), exclusive of surcharges and interest, despite service of notices and demand letters for them to pay the said tax including the Final Notice Before Seizure dated March 16, 2016, to the damage and prejudice of the Government.

CONTRARY TO LAW.

In support thereof, the following documents were attached to said Information:

1. Resolution dated August 2, 2019 issued by Assistant State Prosecutor Alejandro C. Daguiso, recommending that Logistics.com Corporation, Jovan G. Trias, Arman R. Ong and Erma O. Aunario be charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended;

2. A letter of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Logistics.com Corporation, Jovan G. Trias, Arman R. Ong and Erma O. Aunario; and

3. Joint Complaint Affidavit (JCA) of Clemente Tenorio, Marilyn Buendicho, Amapola Jane C. San Juan, Michele A. Delos Santos, Mark M. Secretario and Don Johnson Guevarra dated February 28, 2019 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheets;[1]
b. Letter of Authority dated September 6, 2011;[2]
c. First Request for Presentation of Records dated September 7, 2011;[3]
d. First Notice dated September 22, 2011;[4]
e. Subpoena Duces Tecum;[5]
f. Preliminary Assessment Notice;[6]
g. Registry Return Receipt;[7]

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1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annex "D," JCA.
5 Annex "E," JCA.
6 Annex "F," JCA.

h. Formal Letter of Demand dated October 23, 2013;[8]
i. Details of Discrepancies;[9]
j. Audit Results/ Assessment Notice;[10]
k. Final Decision on Disputed Assessment dated July 28, 2015;[11]
l. Registry Return Receipt;[12]
m. Preliminary Collection Letter dated February 12, 2016;[13]
n. Registry Return Receipt;[14]
o. Final Notice Before Seizure dated March 16, 2016;[15]
p. Registry Return Receipt;[16]
q. Warrant of Distraint and/ or Levy;[17] and
r. Warrants of Garnishment.[18]

OUR RULING

This case merits outright dismissal.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[19]

Jurisprudence[20] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

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7 Annex "F-1," JCA.
8 Annex "G," JCA.
9 Annex "G-1," JCA.
10 Annexes "G-2" to "G-7," JCA.
11 Annex "H," JCA.
12 Annex "H-1," JCA.
13 Annex "I," JCA.
14 Annex "I-1," JCA.
15 Annex "J," JCA.
16 Annex "J-1," JCA.
17 Annex "K," JCA.
18 Annexes "L" to "M-19," JCA.
19 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
20 *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999; and *Lim, Sr. v. CA*, G.R. Nos. L-48134-37, October 18, 1990.

> **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.
>
> ....

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[21]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.*, interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[22] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal

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21 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.

22 *G.R.* Nos. L-48134-37, October 18, 1990.

actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> . . .
>
> 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 wilful refusal to pay the taxes due within the alloted 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.**
>
> **...**[23]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[24] case. There, accused was charged as an officer of El Oro Engravers Corporation for willful failure to pay corporate IT for TY 1979. Among the defenses she posed is that said offense had prescribed. The Supreme Court ruled in the negative, ratiocinating in this wise:

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

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23 Boldfacing supplied.

24 G.R. No. 127777, October 1, 1999.

...[25]

Indeed, the *Lim* case and the *Tupaz* case were in unison in holding that the offense of willful failure to pay tax is *committed* upon finality of the assessment, coupled with the taxpayer's deliberate refusal to pay taxes due. However, these cases differ as to when interruption of the five (5)-year prescriptive period under Section 281 of the NIRC, as amended occurs. In the *Lim* case, the prescriptive period was interrupted by the filing of Information in court, whereas in the *Tupaz* case, said prescriptive period was interrupted by the filing of the Complaint before the DOJ for preliminary investigation.

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:

> **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. In criminal actions involving violations of the tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing. (Rules of Court, Rule 110, sec. 2a; n)
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> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied).

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.

As claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) dated October 23, 2013 was issued by respondent. On May 27, 2014, accused filed its protest. Acting on

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25 Citations omitted. Boldfacing supplied.

the protest, a Final Decision on Disputed Assessment (FDDA) was issued on July 28, 2015, which was received by accused on August 5, 2013.

The *Tupaz* case held that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer. Based on the records of this case, the Court cannot determine the date of receipt of the accused of the FLD. However, the BIR alleged that the FDDA was received by the accused on August 5, 2013. Clearly, the offense charged had already prescribed when the Information was filed before this Court on December 5, 2022.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-973, is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice