REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

VINCENT PAUL L. AMPOSTA,
Blk 14 Lot 2-4, BF Homes, Martinville Manuyo I, Las Pinas City,
Accused.

CTA Crim. Case No. O-998
(NPS Docket No. XVI-INV-19K-00452)

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

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

Promulgated:
MAR 13 2023 ; 1:00 P.M.

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RESOLUTION

On January 20, 2023, the Court ordered plaintiff to submit proof of actual receipt by the accused of the Final Decision on Disputed Assessment (FDDA).

On February 10, 2023, Records Verification shows that counsel for plaintiff failed to submit any proof of service and actual receipt of the FDDA.

Jurisprudence[1] 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.

To reiterate, perusal of the supporting documents shows that the certified true copy of Assessment Notice No. VT-ELA14236-10-15-1107, dated November 16, 2015, was received

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[1] *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

by accused's accounting supervisor on November 26, 2015. The said Assessment Notice did not become final and executory since accused was able to protest the same on December 15, 2015, as stated in the FDDA dated October 13, 2016.

In the Joint Complaint-Affidavit, it was also alleged that the FDDA was served on accused through registered mail. However, the Court observes that there is no proof of receipt of the FDDA which would give rise to the accused's obligation to pay the said assessment.

Despite the period given, the prosecution failed to submit additional documents showing the accused's actual receipt of the FDDA. Hence, there is no showing of when accused's obligation to pay arose, or when the offense of failure to pay the assessed deficiency tax was committed.

Aside from the foregoing, the Court finds that the Information is dismissible for prescription. Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> SEC. 281. Prescription for Violations of any Provision of this Code. – All violations of any provisions of this Code shall prescribe after five (5) years.
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> 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.
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Rule 9, Section 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the institution of the criminal action, by the filing of an Information, interrupts the running of the prescriptive period:

> SEC. 2. *Institution of criminal actions.* – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be institution 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.
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> The institution of the criminal action shall interrupt the running of the period of prescription.

Thus, 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 prescription period was interrupted.[2]

For tax offenses punishable under the NIRC, the prescriptive period is five (5) years, commencing from commission of the tax offense, if known at that time or from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment, and interrupted by the filing of the Information in the court.

In the instant case, the offense charged is willful failure to pay the deficiency VAT assessment for taxable year 2010. Presuming that the FDDA, allegedly served via registered mail on October 13, 2016, was received in the ordinary course of mail, then the offense of willful failure to pay was committed on November 12, 2016, or the day after the last day to pay provided in the FDDA.

Counting from November 12, 2016, the five (5) year prescriptive period lapsed on November 12, 2021. Thus, the right of the government to institute the case against the accused had already prescribed when the Information was filed before this Court on December 6, 2022.

Based on the foregoing grounds, the Court finds no probable cause for the issuance of a warrant of arrest against the accused.

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

WHEREFORE, the instant Information docketed as CTA Crim. Case No. O-998 is **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice