REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-185**
-*versus*-	Members:
YEN CHAN LIAW (2 Antonio St., Mandaluyong City)	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
KING LIN LEU (Mayfair St., Montevista Park Subd. Cainta, Rizal), *Accused.*	Promulgated: JUN 24 2024 4:24 p.m.

x- x

R E S O L U T I O N

On August 2, 2010, an Information was filed against accused Yen Chan Liaw (Liaw) and King Lin Leu (Leu), president and treasurer, respectively, of Mitsuko Philippines Corporation (Mitsuko). Said accused were charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

For easy reference, the accusatory portion of the Information reads:

> "That for the taxable year 2001, in the Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, being president/treasurer and president, respectively, and being the responsible officers of Mitsuko Philippines Corporation, a domestic corporation organized under the laws of the Philippines, and required under the law to file a true and complete quarterly income tax return of Mitsuko Philippines Corporation, fail to file a return, notwithstanding the receipt of income on sales based on importations on the said taxable year

amounting to PhP637,326,239, to the damage and prejudice of the Government in the estimated amount of PhP68,927,421.13, exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

Meanwhile, the following documents were attached to the subject Information:

1. Resolution dated January 3, 2008 issued by State Prosecutor I Olivia L. Torrevillas, recommending the filing of two (2) criminal informations against the accused for violation of the 1997 NIRC, as amended;

2. Referral for preliminary investigation and filing of information against Liaw and Leu, issued by Officer-in-Charge (OIC) of the Commissioner of Internal Revenue (CIR) Jose Mario C. Buñag, and filed with the Department of Justice (DOJ) on July 21, 2005; and

3. Joint Affidavit (JA) of Gerald Alan A. Quebral, Gerardo C. Utanes, Eliseo C. Uy, Cristina E. Asuncion and Group Supervisor Nelson L. Boongaling, filed with the DOJ on June 21, 2005, with the following attachments:

a. Custom Bonded Warehouse Reference No. M-1265-FTI;[1]
b. Letter of Authority No. 2001-00002461 dated December 8, 2004;[2]
c. Certification of Ms. Annette Isabel P. Tamayo, OIC, Corporate Filing and Records Division of the Securities and Exchange Commission;[3]
d. Certification of Revenue District Office, RDO 46-Cainta, Rizal dated March 28, 2005;
e. Certification of the Assistant Commissioner, Information Systems Operation Service dated February 23, 2005;[4] and
f. Letter of Margaret Mary C. Lauron, OIC-Head Revenue Executive Assistant, Assessment Service

[1] Annex "A", JA.
[2] Annex "B", JA.
[3] Annex "C", JA.
[4] Annex "E", JA.

> regarding the turn-over of information in diskette form.[5]

On August 23, 2010 the Court issued a Resolution[6] declaring the existence of probable cause for the issuance of warrants of arrest against Liaw and Leu.

On November 9, 2010, the Court issued a Resolution[7] issuing an Alias Warrant of Arrest against Liaw and Leu.

On April 15, 2011, the Court issued a Resolution ordering the Chief of Police of Cainta, Rizal to make a return of the Warrant of Arrest.[8]

On November 26, 2013, the Court issued a Resolution[9] to let this case be archived pending the apprehension of both accused Liaw and Leu.

On February 17, 2020, the Court issued a Resolution[10] for the enforcement of the outstanding Alias Warrants of Arrest against Liaw and Leu. Considering the repeated failure of the police authorities to locate the accused, on July 9, 2020[11] and September 24, 2020,[12] respectively, the Court issued a Resolution for the enforcement of the outstanding Alias Warrants of Arrest against Liaw and Leu.

Finally, on February 15, 2021, the Court issued a Resolution[13] where it noted the Report on Implementation of Warrant of Arrest dated November 11, 2020, that Liaw and Leu still cannot be located.

After revisiting and reviewing the records of the present case, the Court resolves to dismiss the same on the ground of prescription.

---

[5] Annex "F", JA.
[6] Docket, pp. 231-232.
[7] Docket, pp. 239-240.
[8] Docket, p. 244.
[9] Docket, p. 267.
[10] Docket, p. 271.
[11] Docket, pp. 283-284.
[12] Docket, pp. 303-304.
[13] Docket, p. 325.

Section 281 of the 1997 NIRC, as amended, pertinently 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.
>
> xxx xxx xxx"

Under the above-quoted provision, 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.

In relation thereto, in *Lim Sr., et al. v. Court of Appeals,* [14] accused therein were charged for their refusal to pay deficiency income tax due for taxable years (TY)1958 and 1959, among others. The accused raised prescription as one of their special defenses. In ruling that the criminal actions had not yet prescribed, the Supreme Court said that:

> "On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered "discovered" only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the

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

assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. The Solicitor General stresses that Section 354 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 Case 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.

But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:

> Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.

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

> 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."

In the instant case, the Bureau of Internal Revenue (BIR), Revenue Region No. 7 issued a Negative Certification dated March 28, 2005 of Mitsuko's failure to file any income tax returns for TY 1997-2002. On July 21, 2005, the BIR filed its Complaint JA before the DOJ.

Applying Section 281 of the 1997 NIRC, as amended, in relation to the *Lim* case, the fact of discovery happened on March 28, 2005 when the BIR issued the said Negative Certification. Meanwhile, the judicial proceeding for the investigation and punishment of the tax offense happened on July 21, 2005 when the Complaint was filed with the DOJ.

Counting five (5) years from July 21, 2005, the last day for the filing of the Information is on July 21, 2010.

Here, records show that the Information was only filed on August 2, 2010. Considering that the same was filed beyond the five (5)-year prescriptive period, the present criminal action is already barred by prescription.

ACCORDINGLY, CTA Crim. Case No. O-185 is **DISMISSED** on the ground of prescription.

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