REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FAIVO PASCUAL BARTOLOME
Accused.

CTA CRIM. CASE NO. O-926

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
MAY 2 0 2025 9:66 m.

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RESOLUTION

On October 1, 2024, the Court issued a Resolution on the accused's Demurrer to Evidence. The dispositive portion thereof reads:

> "**WHEREFORE,** premises considered, the Demurrer to Evidence" is **GRANTED.** Accordingly, the instant case against accused **FAIVO PASCUAL BARTOLOME** is **DISMISSED**.
>
> **SO ORDERED**."

On November 26, 2024, the plaintiff filed a Motion for Reconsideration *(To the Resolution dated October 1, 2024)*.

On December 5, 2024, the Court issued a Minute Resolution ordering accused to file Comment on the "Motion for Reconsideration *(To the Resolution dated October 1, 2024)*."

According to Records Verification Report dated March 13, 2025, accused failed to file his Comment on the Motion for Reconsideration filed by the plaintiff.

Hence, the Motion for Reconsideration *(To the Resolution dated October 1, 2024)* is now submitted for resolution.

Plaintiff avers that the filing of the Joint Complaint-Affidavit before the Department of Justice for preliminary investigation on October 12, 2018, interrupted the running of prescription; that the offense charged in the present case has not yet prescribed considering that the five-year prescriptive period commenced on August 14, 2015, after the finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period, and when the complaint for preliminary investigation was filed with the Department of Justice on October 12, 2018; and that plaintiff insists that the prescriptive period remains tolled from the time the complaint was filed with the Office of the Prosecutor until such time that an Information was filed with the Court and the respondent is either convicted or acquitted.

The Court resolves to deny the plaintiff's Motion for Reconsideration for the following reasons:

First, the Court granted the Demurrer to Evidence in CTA Crim. Case No. O-926 because based on records, the right of the government to institute the subject case against accused has already prescribed when the Information was filed before this Court on September 6, 2022.

Second, the granting of demurrer to evidence operates as an acquittal of the accused. Criminal Case No. O-928 was dismissed without the express consent of the accused.

Section 7, Rule 117 of the Rules of Court provides:

> ***Former conviction or acquittal; Double Jeopardy*—** **When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.**
>
> **xxx**

The Supreme Court if the case of *SSGT. Jose M. Pacoy vs. Hon. Afable E. Cajigal, People of the Philippines, and Olympio L. Escueta,*[1] enumerates the requisites of double jeopardy, thus:

[1] G.R. NO. 157472, September 28, 2007.

> (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.
>
> As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.
>
> Dismissal of the first case contemplated by Section 7 presupposes a definite or unconditional dismissal which terminates the case. And for the dismissal to be a bar under the jeopardy clause, it must have the effect of acquittal.

All the elements of double jeopardy are present. There was valid information for the crime of violation of Section 255 of the NIRC filed against the accused which resulted in the institution of a criminal case against him before this Court. Accused pleaded not guilty to the charges against him and subsequently, the case was dismissed after the prosecution had rested its case.

To reiterate, the tax offense in this case was ***committed*** on **August 14, 2015**. It is the 10th day after accused Bartolome received the Final Notice dated July 30, 2015. It is at this point in time when accused already knew that he needed to pay the assessed tax liability but he failed to pay. Counting from August 14, 2015, the five (5) year prescriptive period to indict accused Bartolome for failure to pay the assessed Income Tax liability lapsed on **August 14, 2020**. Thus, the right of the government to institute the subject case against accused has already prescribed when the Information was filed before this Court on **<u>September 6, 2022</u>**.

The failure of the prosecution to timely file the Information to the Court, within the five-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, renders the instant case dismissible on the ground of prescription.

WHEREFORE, premises considered, the plaintiff's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice