REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-710** (NPS Docket No. XVI-INV 15C-00258) For: Violation of Section 255 of the NIRC of 1997, as amended
-*versus*-	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
EMMA REDO QUITONG, No. 41 Ortigas Avenue, Pasig City (At Large), *Accused.*	Promulgated: AUG 07 2024 8:08 a.m.

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RESOLUTION

Accused Emma Redo Quitong is charged for violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended, in relation to Sections 253(d) and 256 thereof. The pertinent portion of the *Amended Information* is quoted below:

> "That on or about May 2015, in Quezon City, and within the jurisdiction of this Honorable Court, accused EMMA REDO QUITONG, required by law to file income tax return and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay the aggregate deficiency Value -Added Tax (VAT) for taxable year 2007 in the amount of Two Million Ninety Three Thousand Five Hundred Seven Pesos and Seventy Nine Centavos (P2,093,507.79), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2007, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of demand before suit issued on May 8, 2015, to the damage and prejudice of the government. "
>
> CONTRARY TO LAW.

In a *Resolution* dated June 13, 2019[1], the Court found the existence of probable cause to hold the accused for trial and ordered the issuance of a *Warrant of Arrest* against accused Emma Redo Quitong. The said *Warrant* was issued on June 18, 2019[2]. Subsequently, on July 30, 2019, a *Return of Warrant of Arrest* was received by the Court, stating that the subject of the said *Warrant* cannot be located during the time of service. The same was noted by the Court in a *Resolution* dated August 8, 2019[3].

On August 14, 2019, an *Alias Warrant of Arrest* was issued[4]. In a *Resolution* dated November 5, 2019[5], the Court noted the return of the photocopy of the said *Alias Warrant*, stating that the accused cannot be located during the time of service. Thereafter, on February 1, 2021, another *Return of the Warrant of Arrest*[6] was received by the Court, informing the latter that no Emma Redo Quitong stayed or occupied the above address since 2007.

On February 5, 2021, the Court issued a *Resolution* archiving the case. The dispositive portion of the said *Resolution* is hereunder quoted, as follows:

> WHEREFORE, it appearing that to date, accused Emma Redo Quitong still remains at-large for more than six (6) months from the issuance of the Warrant of Arrest, and in order that this case may not remain pending in the Court's docket for an indefinite period of time, let this case be ARCHIVED, subject to its revival upon the arrest of the accused.
>
> **SO ORDERED.**

Meanwhile, the number of criminal cases archived due to the failure of authorities to cause the arrest of the accused, together with the successive dismissal of recent cases on the ground of prescription, prompted this Court to review the archived cases to determine whether they were filed within the prescriptive period provided under Section 281 of the NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

Section 281 of the NIRC, as amended, provides the period of prescription for violations of any provision of the NIRC, *viz.*:

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[1] Division Docket, pp. 75 to 76.
[2] Division Docket, p. 77.
[3] Division Docket, pp. 82 to 83.
[4] Division Docket, p. 84 to 85.
[5] Division Docket, pp. 90 to 91.
[6] Division Docket, pp. 92.

> 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 date 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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> The term of prescription shall not run when the offender is absent from the Philippines. (Emphasis supplied).

Further, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the institution of criminal actions shall interrupt the running of the period of prescription, *to wit:*

> Section 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 Republic 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 criminal actions shall interrupt the running of the period of prescription.** (Emphasis supplied)

Pursuant to the foregoing provisions, all violations of any provision of NIRC shall prescribe after five (5) years and such period shall begin to run from the date of the commission of the violation of the law. Meanwhile, only the institution of criminal actions shall interrupt the running of the 5-year prescriptive period.

In the subject *Information*, the offense charged involves willful failure to pay basic deficiency Value-Added Tax (VAT). Based on jurisprudence[7], the crime of willful failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

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[7] *Lim v. Court of Appeals*, G.R. No. L-48134-37, October 18, 1990; and *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999.

Based on the allegations in the *Amended Information*, together with the *Joint-Complaint Affidavit* dated July 23, 2015 and its supporting documents, the Formal Assessment Notice (FAN), with attached Details of Discrepancies and Assessment Notices, was issued on July 25, 2011[8] and sent to the accused by way of registered mail[9]. After the lapse of thirty (30) days from the taxpayer's receipt thereof, if no valid protest was filed, the tax assessment shall have become final, executory and demandable, creating a cause of action for the Bureau of Internal Revenue (BIR) against the accused for the crime charged.

In the present case, however, while there was an allegation of service of the FAN, the Court cannot ascertain from the records of the case when the FAN was received by the taxpayer for purposes of determining the onset of the 30-day period.

A perusal of the records reveals that the registry receipt corresponding to the aforementioned registered mail was not attached to the *Joint-Complaint Affidavit* dated July 23, 2015. Only a photocopy of the envelope with BIR Post Office Stamp QC stamp dated October 18, 2011[10] was attached thereto as proof of mailing. As such, the Court has no proof to establish the taxpayer's receipt of the FAN.

Furthermore, in the Assessment Notices attached to the FAN, no due date for payment is indicated therein[11].

Nevertheless, a careful examination of the FAN reveals that the accused was allotted a period of until August 31, 2011, within which to pay the deficiency taxes; otherwise, interest and the total amount due thereon will be adjusted. Considering that the accused failed to pay the same on or before the said due date, the offense of failure to pay tax under Section 255 of the NIRC was committed on **September 1, 2011**. Accordingly, the plaintiff had five (5) years from the said date or until **September 1, 2016** within which to file the *Information* in Court. In this case, the *Information* was filed only on **March 18, 2019**, or clearly beyond the five (5) year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-710 is hereby **WITHDRAWN** from the archives and **DISMISSED** due to prescription of the offense charged. Let the *Warrant of Arrest* issued against accused be **RECALLED** and **SET ASIDE**.

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[8] Annex "G", *Joint Complaint Affidavit* dated July 23, 2015, pp. 34 to 35.
[9] Par. 11, *Joint Complaint-Affidavit* dated September 28, 2017, p. 21.
[10] Annex "G-3", *Joint Complaint Affidavit* dated July 23, 2015, p. 39.
[11] Annexes "G-1" and "G-2", *Joint Complaint Affidavit* dated July 23, 2015, pp. 37 and 38.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(On Leave)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice