REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-115**
	For: Violation of Section 255 in relation to Section 253(d) and 256 of the Tax Code of 1997, as amended by Republic Act No. 8424
-versus-	Members:
PACIFICO Q. LIM, c/o Dimsum Unlimited Inc. 901 Ongpin St., Sta. Cruz, Manila, *Accused.*	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
	Promulgated:
	APR 23 2025 11:46 a.m.

x- x

RESOLUTION

For the Court's resolution is the *Motion for Reconsideration (Re: Resolution dated August 7, 2024)* filed on September 18, 2024 by the plaintiff, through the deputized Special Prosecutors from the Bureau of Internal Revenue (BIR).[1]

To recall, on August 7, 2024, the Court promulgated a *Resolution* dismissing the Information filed on March 12, 2009 due to prescription of the offense charged, and recalling the Warrant of Arrest previously issued against the accused.

Aggrieved, the plaintiff filed the subject *Motion* seeking the reversal of the August 7, 2024 *Resolution.* The plaintiff avers that the Formal Letter of Demand and Assessment Notices (FLD/ANs) were issued against the accused on January 23, 2004 and served via registered mail. For failure of the accused to file a valid protest, the FLD/ANs became final on February 24, 2004. Thus, plaintiff argues that when the complaint was filed with the Department of Justice (DOJ) on July 29, 2008, the criminal action was instituted within the five (5) –year prescriptive period.

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[1] Authorization and Deputization of BIR Lawyers dated September 8, 2021 signed by Prosecutor General Benedicto A. Malcontento of the Department of Justice.

We deny the instant *Motion*.

According to the plaintiff, the Court erred in dismissing the case on the ground that the Information was filed beyond the five (5)-prescriptive period. It relies on the case of *People v. Mateo A. Lee, Jr.*[2] where it was held that the filing of complaint with the prosecutor tolls the running of the prescriptive period.

We are not convinced.

Plaintiff's reliance on the case of *Lee, Jr.* is misplaced considering that said case involves violation of Republic Act No. 7877, also known as the "Anti-Sexual Harassment Act of 1995", and application of Act No. 3326, otherwise known as ""An Act to Establish Periods of Prescription for Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run," as amended by Act 3763.

On the other hand, the violation charged in this case is willful failure to pay under Section 255 of the Tax Code. To reiterate, prescription for violations of the Tax Code is expressly provided under Section 281 thereof, to wit:

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

Relative thereto, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that:

> Section 2: Institution of criminal actions. **All criminal actions** before the Court in Division in the exercise of its original jurisdiction **shall be <u>instituted by the filing of an information</u>**

[2] G.R. No. 234618, September 16, 2019.

> **<u>in the name of the Republic of the Philippines</u>**. 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.
>
> **The institution of criminal actions shall <u>interrupt</u> the running of the period of prescription**. (Emphasis supplied)

As gleaned from the above provisions, the five (5)-year period of prescription for violations of the Tax Code begins to run either **(a)** from the day of the commission of the violation; or **(b)** if the same be not known at that time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment. Further, pursuant to the RRCTA which was approved by the Supreme Court on November 22, 2005, the period to institute criminal actions for violations of the Tax Code shall be interrupted by the filing of an information with the Court in Division of the CTA.

Based on jurisprudence[3], 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.

Records show that the Assessment Notices subject of the case were issued and allegedly served via registered mail on January 23, 2004. Taking into consideration that no protest or payment was made within the allotted period of thirty (30) days from January 23, 2004 or until February 23, 2004, the assessment became final and executory on **February 24, 2004**. Thus, the plaintiff had five (5) years from February 24, 2004 or until **February 24, 2009**, within which to institute the criminal action before the Court. Thus, the filing of the Information on **March 12, 2009** is clearly beyond the five (5)-year prescriptive period.

In view of the foregoing, the Court finds no merit in the instant *Motion* as the same did not raise any cogent or substantial ground to warrant reconsideration of this Court's August 7, 2024 *Resolution*.

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration (Re: Resolution dated August 7, 2024)* filed on September 18, 2024*)* is **DENIED** for lack of merit.

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[3] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, G.R. No. L-48134-37, 18 October 1990 and *Petronilla C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777, 1 October 1999.

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