REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-757** (NPS. No. XVI-INV-18E-00158) For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	**Members:**
JOB1 GLOBAL, INC. President MANUEL ENRICO FEDERICO R. SANTOS (Space A 11/12/12A 4th Floor, Framers Plaza, Araneta Center, Cubao, Quezon City, and/or Unit 2-E Quedsa Plaza Quezon Avenue), At -Large *Accused.*	**MANAHAN,** *Chairperson,* **REYES-FAJARDO, ANGELES,** *JJ.* Promulgated: SEP 26 2024 3:20 p.m.

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RESOLUTION

On July 16, 2019, an Information[1] was filed against accused Job1 Global, Inc. and Manuel Enrico Federico R. Santos indicting them of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The accusatory portion of which states:

> That on or about July 31, 2017 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, JOB1 GLOBAL, INC., a corporation engaged in the business of establishing, providing through the use of information technology, software, systems and techniques related to job-aptitude testing, human resource management and Manuel Enrico Federico R. Santos, being its president, with obligation under the law to file value added tax and pay the correct value added tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency value added tax for taxable year **2009**, despite final assessment and formal demand to pay, including the services of several prior and post notices and demands, the latest being in the nature of demand letter before

[1] With Amended Information filed on March 6, 2020.

taking criminal action issued on July 31, 2017, to the damage and prejudice of the Government in the amount of One Million One Hundred Fifty Seven Thousand Three Hundred Seventy One and 50/100 Pesos **(Php 1,157,371.50)**, exclusive of surcharges and interest.

CONTRARY TO LAW.

In support thereof, the following documents were attached to said Information:

1. Resolution dated September 19, 2018 issued by Assistant State Prosecutor Hjalmar M. Quintana, Jr., recommending that Job1 Global, Inc. and Manuel Enrico Federico R. Santos be charged for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended;

2. Letter dated May 31, 2018 of then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal complaint against accused; and

3. Joint Complaint-Affidavit (CA) of Cheryl A. Hernandez, Julieta G. Supan and Ramon S. Bautista dated May 31, 2018 and filed with the DOJ on even date, with the following attachments:

a. Letter of Authority dated June 24, 2010;[2]
b. First Request for Presentation of Records dated July 19, 2010;[3]
c. Second Request for Presentation of Records;[4]
d. Letter of Authority dated September 21, 2010;[5]
e. Final Request for Presentation of Records;[6]
f. Post-Reporting Notice;[7]
g. Memorandum for The Revenue District Officer;[8]
h. Preliminary Assessment Notice dated December 21, 2012;[9]
i. Formal Letter of Demand dated January 14, 2013;[10]

[2] Annex "A," CA.
[3] Annex "B," CA.
[4] Annex "C," CA.
[5] Annexes "D," CA.
[6] Annex "E," CA.
[7] Annex "F," CA.
[8] Annex "G," CA.
[9] Annex "H," CA.
[10] Annex "I," CA.

j. Assessment Notices dated January 14, 2013;[11]
k. Preliminary Collection Letter dated June 28, 2013;[12]
l. Final Notice before Seizure dated July 15, 2013;[13]
m. Warrant of Garnishment dated November 27, 2013;[14]
n. Demand Before Suit dated July 31, 2017;[15] and
o. Registry Return Receipt.[16]

OUR RULING

This case merits dismissal.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[17]

Jurisprudence[18] 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.

> **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.

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11 Annexes "I-1 to "I-3," CA.
12 Annex "J," CA.
13 Annex "K," CA.
14 Annex "L to S," CA.
15 Annex "T," CA
16 Annex "T-1" CA.
17 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
18 *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

> 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.
>
> ....

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 prescriptive period was interrupted.[19]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.*, interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[20] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> ...
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was

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

20 *G.R.* Nos. L-48134-37, October 18, 1990.

> committed only after receipt was coupled with the wilful refusal to pay the taxes due within the alloted period. The two **criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
>
> ...[21]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[22] case. There, accused was charged as an officer of El Oro Engravers Corporation for willful failure to pay corporate IT for TY 1979. Among the defenses she posed is that said offense had prescribed. The Supreme Court ruled in the negative, ratiocinating in this wise:

> .... Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals,* we stated that by its nature the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. **As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period.**
>
> ...[23]

Indeed, the *Lim* case and the *Tupaz* case were in unison in holding that the offense of willful failure to pay tax is *committed* upon finality of the assessment, coupled with the taxpayer's deliberate refusal to pay taxes due. However, these cases differ as to when interruption of the five (5)-year prescriptive period under Section 281 of the NIRC, as amended occurs. In the *Lim* case, the prescriptive period was interrupted by the filing of Information in court, whereas

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21 Boldfacing supplied.
22 G.R. No. 127777, October 1, 1999.
23 Citations omitted. Boldfacing supplied.

in the *Tupaz* case, said prescriptive period was interrupted by the filing of the Complaint before the DOJ for preliminary investigation.

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:

> **SEC. 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 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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied.

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.

As claimed by the BIR in its Complaint Affidavit, the Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices were served to and personally received by taxpayer's representative at the registered address of accused on January 14, 2013. There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on February 14, 2013. *Sans* payment thereof by accused, the tax offenses, in these cases, were *committed* on February 14, 2013.

Counting from February 14, 2013, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on February 14, 2018. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on July 16, 2019.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription.

WHEREFORE, CTA Criminal Case No. O-757 is withdrawn from the archives and accordingly **DISMISSED** on the ground of prescription of the offense charged.

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