REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1029** (NPS No. XV-05-INV-22L-3360) For: Violation of Sec. 255 of National Internal Revenue Code of 1997, as amended
-versus-	**Members:**
ALDWIN JASON QUIMSON BOLANTE, (Unit 2006, The Traded and Financial Tower, 7th Ave., cor. 32nd St., Fort Bonifacio, Global City, Taguig City 1635), *Accused.*	**DEL ROSARIO,** *PJ, Chairperson* **MANAHAN, and REYES-FAJARDO** *JJ.* Promulgated: MAY 23 2023, 2:35 PM

x- -x

RESOLUTION

On March 28, 2023, an Information was filed against accused **ALDWIN JASON QUIMSON BOLANTE,** indicting him of violation of Section 255 of the National Internal Revenue Code of 1997, as amended. The accusatory portion of which states:

> That on or about August 10, 2018 and thereafter, in the city of Makati, the Philippines, accused ALDWIN JASON QUIMSON BOLANTE, the proprietor of BRS I. T. Solutions, which is registered at BIR with Taxpayer Identification Number 250-061-715-000, did then and there willfully, unlawfully and feloniously refuse and fail to pay his value added tax deficiencies for the taxable period of January 1, 2014 to August 18, 2015 in the total amount of One Million One Hundred Ninety-Two Thousand Nine Hundred Thirteen Pesos and 96/100 (P1,192,913.96), exclusive of surcharge, interest, and penalty, despite final assessment and repeated demands to the damage and prejudice of the Government of the Republic of the Philippines.
>
> **CONTRARY TO LAW.**

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

1. Resolution dated March 20, 2023 issued by Senior Assistant City Prosecutor Mark Gjefferson E. Pabalate, recommending that Aldwin Jason Quimson Bolante be charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended;

2. A letter dated December 16, 2022 of Regional Director Jethro M. Sabariaga to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Aldwin Jason Quimson Bolante; and

3. Joint Complaint Affidavit (JCA) of Revenue Officer Niko G. Colico and Revenue Officer Ellen Gay D. Teoxon dated December 7, 2022 and filed with the DOJ on December 19, 2022, with the following attachments:

a. Letter to the Bureau of Internal Revenue;[1]
b. Memorandum of Assignment;[2]
c. Letter of Authority dated May 13, 2016;[3]
d. Preliminary Assessment Notice dated November 7, 2017;[4]
e. Details of Discrepancies dated November 7, 2017;[5]
f. Formal Assessment Notice dated December 4, 2017;[6]
g. Details of Discrepancies dated December 4, 2017;[7]
h. Request for Reinvestigation of the Initial Assessment on Books of Account (BRS I.T. Solutions);[8]
i. Letter dated January 31, 2018 to Mr. Aldwin Jason Quimson Bolante (BRS I.T. Solutions);[9]
j. Letter dated January 31, 2018 to Ms. Rollynette Santos Gepila;[10]
k. Memorandum dated May 29, 2018 for the Regional Director;[11]

---

1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annex "D," JCA.
5 Annex "E," JCA.
6 Annex "F," JCA.
7 Annex "G," JCA.
8 Annex "H," JCA.
9 Annex "I," JCA.
10 Annex "I-1," JCA.
11 Annex "J," JCA.

l. Final Decision on Disputed Assessment dated August 10, 2018;[12]
m. Details of Discrepancies dated August 10, 2018;[13]
n. Warrant of Distraint and/or Levy dated November 27, 2019;[14]
o. Memorandum dated September 6, 2019 to Teoxon, Ellen Gay D.;[15]
p. Warrants of Garnishment and Levy dated December 3, 2019 ;[16]
q. Report of Delinquent Accounts dated August 25, 2022;[17] and
r. Letter dated September 21, 2022 to Mr. Aldwin Jason Quimson Bolante.[18]

OUR RULING

This case merits outright 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.[19]

Jurisprudence[20] 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.

---

12 Annex "K," JCA.
13 Annex "L," JCA.
14 Annex "M," JCA.
15 Annex "N," JCA.
16 Annex "O" to "O-14," JCA.
17 Annex "P," JCA.
18 Annex "Q," JCA.
19 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
20 *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999; and *Lim, Sr. v. CA*, *G.R.* Nos. L-48134-37, October 18, 1990.

> **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.
>
> ....

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.[21]

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*[22] 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:

---

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

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

> ...
>
> 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 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.**
>
> ...[23]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[24] 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.**
>
> ...[25]

---

[23] Boldfacing supplied.
[24] G.R. No. 127777, October 1, 1999.
[25] Citations omitted. Boldfacing supplied.

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 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.

Based on the records of this case, the Formal Assessment Notice dated December 4, 2017 issued by respondent was received by accused on December 7, 2017. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on January 7, 2018.

Counting from January 7, 2018, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on January 7,

2023. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on March 28, 2023.

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, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-1029, is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice