REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-849** (NPS Docket No. XVI-INV-19J-00387)
	For Violation of Section 255 of the National Internal Revenue Code of 1997, as amended, in relation to Sections 253 and 256 of the same code
- versus -	Members:
SND99 FOOD CORPORATION and DANILO P. VITAN, JR., (No. 18 Caras De Andalucia, Visayas Ave., Culiat, Quezon City), *Accused.*	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.* Promulgated: AUG 07 2024 8:02 a.m.

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RESOLUTION

Accused SND99 Food Corporation (SND99), and its president, Danilo P. Vitan, Jr., are charged for violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997 (NIRC), as amended, in the Information dated January 9, 2020 as quoted hereunder:

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses SND99 Food Corporation and Danilo P. Vitan, Jr. being its president, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253 and 256 of the same code, committed as follows:
>
> > "That on or about August 18, 2015 and thereafter, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused SND99 Food Corporation, required by law to file tax returns and pay the value-added tax, and accused Danilo P. Vitan, Jr., president of SND99 Food Corporation, did then and there willfully, unlawfully and feloniously fail to pay deficiency value-added

> -tax from January 1, 2011 to December 31, 2011 in the amount of Two Million Seven Hundred Seventy-Four Thousand Five Hundred Forty-Four Pesos & 55/100 (₱2,774,544.55), exclusive of increments, despite final assessment notice, including prior and post notices, demands to pay and final notice before seizure dated August 18, 2015, to the damage and prejudice of the Government."
>
> CONTRARY TO LAW.

In a *Resolution* dated December 16, 2020[1], the Court found probable cause to hold accused for trial and ordered the issuance of Warrant of Arrest against the accused.

On September 27, 2022, the Court issued a *Resolution*[2] noting the Return of Warrant of Arrest filed on August 16, 2022 by Police Executive Master Sergeant Jonathan B. Caranza, Officer-in-Charge, Warrant and Subpoena Section, Criminal Investigation and Detection Unit of the Quezon City Police District, stating that the accused Danilo P. Vitan, Jr., subject of the Warrant of Arrest, cannot be located or found in the given address. In the same *Resolution*, the Court ordered the issuance of Alias Warrant of Arrest against the accused.

Subsequently, on September 29, 2022, an Alias Warrant of Arrest[3] was issued against the accused.

However, considering that the accused remained at-large, the Court resolved to archive the instant case through its *Resolution* dated April 13, 2023[4], as quoted hereunder:

> It appearing from the records of the above-entitled case that the Warrant of Arrest for accused Danilo P. Vitan, Jr., dated January 6, 2021, have been returned unserved on the ground that "said accused could not be found at said given address despite diligent efforts exerted", and considering further that Alias Warrant of Arrest was already issued, and in order that this case may not remain pending in the Court's docket for an indefinite period of time; the above-captioned case is hereby **ARCHIVED**, without prejudice to its revival immediately upon apprehension of accused DANILO P. VITAN, JR.
>
> Let a copy of this Resolution be furnished the prosecution and the Commissioner of Internal Revenue, who are hereby directed to exert efforts to ascertain the whereabouts of the accused for his early apprehension.

[1] Division Docket, pp. 53 to 54.
[2] Division Docket, pp. 66 to 67.
[3] Division Docket, p. 68.
[4] Division Docket, p. 71.

SO ORDERED.

Meanwhile, the number of criminal cases archived due to the authorities' failure to cause the arrest of the accused, as well as 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, states the prescription for violations of any provision of the NIRC, *viz.*:

> 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 offended is absent from the Philippines. (*Emphasis Supplied*)

Based on the above-cited provision, all violations of any provision of the NIRC shall prescribe after five (5) years from the date of the commission of the violation of the law, or if the same be unknown, at the time of discovery thereof.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> 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 action 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 the criminal action shall interrupt the running of the period of prescription.** (*Emphasis Supplied*)

The offense charged in the subject Information involves the accused's alleged willful failure to pay deficiency value-added tax (VAT). Based on jurisprudence,[5] 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.

A careful reading of the Prosecutor's Resolution[6] shows that on January 8, 2015, the Commissioner of Internal Revenue (CIR), through the Regional Director, issued Formal Letters of Demand (FLD) with Details of Discrepancy and Assessment Notices Demand No. 39-B145-11, requiring SND99 to pay on or before February 7, 2015, its VAT deficiency for taxable year 2011, among others. It was likewise emphasized that the Assessment Notices were served to SND99 on January 9, 2015, and were ignored by the accused. Both the Prosecutor's Resolution and the Complaint-Affidavit concluded that since the accused failed to file any administrative protest pursuant to Section 228 of the NIRC, the tax assessment has already become final and incontestable.[7]

Based on the Prosecutor's Resolution, it can already be inferred that the subject Information was filed beyond the five (5)-year prescriptive period.

Taking into consideration that the Assessment Notice for VAT[8] attached to the FLD was served on January 9, 2015 as evidenced by the Affidavit of Service[9] of the revenue officers who served the same, and no protest was filed within the period of thirty (30) days therefrom, the assessment became final and executory on February 9, 2015, after the lapse of the thirty (30)-day period. Thus, the plaintiff had five (5) years from February 9, 2015 or until **February 9, 2020**, within which to institute the criminal action before the Court. Unfortunately, the Information for the instant case was filed only on November 24, 2020.

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[5] *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.
[6] Resolution dated January 9, 2020, Division Docket, pp. 7 to 13.
[7] Resolution dated January 9, 2020, Division Docket, p. 11; Par. 7.8, Complaint-Affidavit dated October 10, 2019, Division Docket, p. 25.
[8] Division Docket, p. 41.
[9] Division Docket, p. 45.

In light of the foregoing, the Court finds that the Information subject of the instant case should be dismissed for being filed beyond the five (5)-year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-849 is hereby **WITHDRAWN** from the archives. Moreover, the instant Information is hereby **DISMISSED** due to prescription of the offense charged. Let the Warrant of Arrest issued against accused be **RECALLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice