REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RAMON TAMBUNTING,
c/o Casa Agencias De Empenos
Antonio L. Tambunting y Hijos, Inc.
908 Soler St. Binondo, Manila
(At-Large),
Accused.

CTA CRIM. CASE NO. O-102
For: Violation of Section 255 in relation to Sec. 253(d) and 256 of the 1997 Tax Code

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

AUG 15 2024
4:17 p.m.

x - x

RESOLUTION

To recall, on November 7, 2008, the prosecution filed the *Information* dated March 11, 2008[1] against herein accused **RAMON TAMBUNTING,** for violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, for his failure to pay deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST) and compromise penalty for taxable year (TY) 1999 without formally protesting against or appealing the same despite due assessment, notice and demand to do so.

Thereafter, on November 14, 2008, the Court ordered the issuance of a Warrant of Arrest, finding probable cause for the issuance thereof.[2] As such, a Warrant of Arrest was issued against the accused on November 18, 2008.[3]

On February 5, 2009, the Court received the *Return of Warrant of Arrest* stating that the accused could not be found at the given address despite

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[1] Docket pp. 1 to 2.
[2] Docket p. 21.
[3] Docket p. 22.

diligent efforts. Thus, on February 9, 2009, the Court ordered the issuance of an Alias Warrant of Arrest.[4]

Subsequently, or on November 6, 2009, the case was archived, without prejudice to its revival immediately upon accused's apprehension.[5]

Upon a careful evaluation of the records, as will be discussed below, this Court finds that the government's right to institute the criminal action has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: *(1)* the period of prescription for the offense charged; *(2)* the time the period of prescription starts to run; and *(3)* the time the prescriptive period is interrupted.[6]

Section 281 of the NIRC of 1997, as amended, provides:

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

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years. Prescription begins to run *(1)* from the day of the commission of the violation of the law; and *(2)* if the day of the commission is unknown, from the discovery of the commission <u>*and*</u> the institution of judicial proceedings for its investigation and punishment. In both instances, the period is interrupted when <u>*judicial*</u> proceedings are instituted against the guilty persons.[7]

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[4] Docket p. 29.
[5] Docket p. 39.
[6] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan.*
[7] *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer),* CTA EB Crim. No. 090, June 21, 2023.

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[8] (*Lim* case), which provides that, for purposes of the commencement of the prescriptive period in relation to the charge of refusal to pay deficiency taxes due, said violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.

In addition, in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep,*[9] the Supreme Court, citing the *Lim* case, held that the offense of **failure to pay deficiency taxes** is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period. We quote:

> Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. 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. (*Emphasis supplied*)

In the present case, the violation was allegedly committed "on or about February 24, 2003". Based on the *Assessment Notices,* the same were issued on January 24, 2003 and served through registered mail on even date. However, the records are bereft of any document showing the actual receipt of the accused of the *Assessment Notices*. Nonetheless, considering that the *Assessment Notices* were issued on January 24, 2003, accused had thirty (30) days therefrom, or until **February 23, 2003** to pay or file a protest against the assessment, which accused failed to do so. Consequently, the assessment attained finality on **February 24, 2003**. It is at this point that the offense was committed since the lack of any action after the accused's receipt of the FLD indicates that the accused refused to pay the tax liability despite demand.

Counting from the finality of the assessment on **February 24, 2003**, the *Information* should have been filed before this Court within five (5) years therefrom, or until **February 24, 2008**. Clearly, when the *Information* was

[8] G.R. Nos. L-48134-37, October 18, 1990.
[9] G.R. No. 127777, October 1, 1999.

filed before this Court on **November 7, 2008**, more than eight (8) months have passed since the government's right to institute a criminal action prescribed.

WHEREFORE, premises considered, CTA Criminal Case No. O-102 is hereby **RETRIEVED** from the archives and, accordingly, **DISMISSED** on the ground of prescription.

Furthermore, the Alias Warrant of Arrest issued against the accused is **RECALLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice