REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-283** For: Violation of Section 255 in relation to Section 256, NIRC as amended
-versus-	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
ERLINDA L. STOHNER Big AA'S Corporation 305 Zaragaoza St., Brgy 32, Zone 2, Tondo, Manila *Accused.*	Promulgated: AUG 07 2024 8:04 a.m.

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RESOLUTION

Accused Erlinda L. Stohner was charged for violation of Section 255 in relation to Section 256 of the National Internal revenue Code (1997 NIRC), as amended. The *Information* is hereunder quoted below:

> "That on or about the year 2001, in the City of Manila, Philippines, the said accused being then the General Manager of Big AA'S CORPORATION, with business address at 305 Zaragoza, Brgy. 32, Zone 2, Tondo, this City, having filed its internal revenue tax of the latter for the year 2001 and after examination and audit of the same, it has been found that there is due collectibles from said BIG AA'S CORPORATION the following to wit:
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> | | |
> |---|---|
> | Per Summary List of Sales Submitted by Your Supplier | P223,805,941.42 |
> | Purchase Per Return | 12,338,206.40 |
> | Discrepancy | **P211,467,735.02** |
> | Percentage (%) of Discrepancy | **94.49%** |
>
> for the said year under BIR Letter Notice, did then and there willfully and unlawfully fail and refuse and neglect to pay Deficiency Value-Added tax in the amount of P1,791,601.34 and Deficiency Income Tax

> in the amount of P5,590,793.26 or in the total of P7,382,394.60 and without formally appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the aforesaid total amount of P7,382,394.60, Philippine Currency."
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> Contrary to Law."

In a *Resolution* dated June 06, 2012[1], the Court found the existence of probable cause to hold the accused for trial and ordered the issuance of a *Warrant of Arrest*. The *Warrant of Arrest* was issued on June 25, 2012[2].

On July 11, 2012, a *Return of Warrant* from Western Metro Manila Criminal Investigation and Detection Team was submitted through registered mail and received by the Court. In the said *Return of Warrant*, it states that the subject of the *Warrant of* Arrest cannot be contacted/located/whereabouts is unknown[3]. The same was noted by the Court in a *Resolution*[4] dated August 10, 2012 and an *Alias Warrant of Arrest* was issued. Also, on August 01, 2024, a *Return of Warrant*[5] from Manila Police District Warrant & Subpoena Section was submitted through registered mail and received by the Court. The same was noted by the Court in a *Resolution*[6] dated September 12, 2012.

On May 06, 2013, the Court issued a *Resolution*[7] archiving the case. The said *Resolution* is hereunder quoted, as follows:

> Considering that more than six (6) months have lapsed from the time the *Alias* Warrant of Arrest was issued against accused Erlinda L. Stohner, and in order that this case may not remain pending for an indefinite period of time, the same is hereby **ARCHIVED**.
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> On the other hand, it appears that the Alias Warrant of Arrest was forwarded to the NBI-Manila, PNP Camp Crame and PNP Station Commander City of Manila on September 29, 2012. Pursuant to Administrative Circular No. 7-A-92, dated June 21, 1993, said officers are hereby **ORDERED** to explain, within ten (10) days from notice, why the accused was not apprehended.
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> **SO ORDERED.**

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[1] Division Docket, page 79.
[2] Division Docket, page 80.
[3] Division Docket, page 82.
[4] Division Docket, page 87.
[5] Division Docket, page 89.
[6] Division Docket, page 93.
[7] Division Docket, page 96.

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 1997 NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

Pursuant to Section 281 of the 1997 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 offender is absent from the Philippines. [Emphasis Supplied].

With the above provision, all violations of any provision of 1997 NIRC shall prescribe after five (5) years and shall begin to run from the date of the commission of the violation of the law.

The institution of criminal actions shall interrupt the running of the period of prescription as provided by Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), *to wit:*

> Section 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 Republic 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.
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> **The institution of criminal actions 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 income tax and value-added tax (VAT). Based on jurisprudence[10], 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.

The Court cannot ascertain whether a final notice and demand for payment was issued to and received by the taxpayer. The Court notes that the CIR issued a Letter of Notice (LN) dated November 28, 2002[11] against the accused. Under Revenue Memorandum Circular No. 40-2003, an LN is merely a notice of audit investigation which was also confirmed in the Prosecutor's Resolution[12]. A perusal of the LN also reveals that BIR **offered** the accused an opportunity to declare voluntarily its undeclared sales and purchases, and pay the corresponding deficiency taxes, and was offered the abatement of the 50% surcharge, 20% interest per annum and compromise penalties applicable on underpayments as well as freedom from closure and criminal suit should it comply with the payment on or before December 12, 2002 and December 27, 2002. Clearly, the offer made by the BIR to the accused is not considered as a final notice and demand for payment.

Moreover, in the *Information*, it states that the alleged offense took place sometime in 2001. Likewise, the *Affidavit* of Orlando V. Chio dated August 31, 2004[13] and the *Joint Affidavit*[14] of Carlo S. Salazar, Daniel T. De Jesus, Ethel C. Evangelista, Flor Jasmin R. Soriano and Alexander D. Martinez reveal that the alleged discovery of underdeclaration of sales happened in 2001.

In view thereof, the Court finds that the filing of the *Information* on May 21, 2012 has prescribed. The Court emphasizes that the *Information* was filed after nine (9) years and five (5) months from issuance of the LN on November 28, 2002 and after eleven (11) years from the alleged discovery of underdeclaration of sales in 2001. Thus, the subject *Information* filed on May 21, 2012 was clearly beyond the five (5) year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-283 is hereby **WITHDRAWN** from the archives. Moreover, the instant *Information* is hereby **DISMISSED** due to prescription of the

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[10] GR. Nos. L-48134 to 37. October 18, 1990, Emilio E. Lim Sr. vs. Court of Appeals.
[11] Division Docket, page 57.
[12] Division Docket, page 20.
[13] Division Docket, pages 36 to 38.
[14] Division Docket, pages 43 to 47

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