REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

\- versus -

MARC ANTHONY B. GERONIMO, in his capacity as Partner/General Manager of DENHART INTERNATIONAL COMPANY,
Accused.

CTA CRIM CASE NO. O-1031

For: Violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

SEP 11 2023; 2:30PM

x -x

RESOLUTION

On April 13, 2023, the prosecution filed an *Information*[1] charging accused **Marc Anthony B. Geronimo**, for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about the 15th day of December 2009, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, in his capacity as **partner/general manager of DENHART INTERNATIONAL COMPANY**, did then and there willfully, unlawfully, and feloniously, fail to pay Deficiency Income Tax, Final Withholding Tax and Expanded Withholding Tax, for the taxable year 2006, as follows:

[1] Docket, pp. 5-6.

Tax Type	**Deficiency Tax Due**	**Interest & Surcharge**
Income Tax	Php2,624,168.75	Php1,478,719.09
Expanded Withholding Tax	Php2,004.31	Php1,730.92
Final Withholding Tax	Php30,251.84	Php26,125.48
Compromise Penalty		Php34,500.00
Total		**Php4,197,500.39**

In the total/gross amount of **Four Million One Hundred Ninety-Seven Thousand Five Hundred Pesos and Thirty-Nine Centavos (Php4,197,500.39)**, inclusive of interests, arising from a final, demandable and executory Assessment/Formal Letter of Demand dated 15 December 2009, to the prejudice of the government in the aforementioned amount.

CONTRARY TO LAW."

In the Resolution[2] promulgated on April 26, 2023, the Court found probable cause to issue a warrant of arrest against accused Marc Anthony B. Geronimo. Hence, a *Warrant of Arrest* was issued against said accused, who may post bail for his provisional liberty in the amount of Sixty Thousand Pesos (Php60,000.00) under the pertinent provisions of the 2018 Bail Bond Guide.

On May 19, 2023, a *Return of Warrant of Arrest* was filed through registered mail by PCMS Ronie B. Garan, PNCOIC, Warrant, and Subpoena Section, Navotas City Police Station City, Warrant & Subpoena Section, M. Naval St., Brgy. Sipac-Almacen, Navotas City, stating that accused Marc Anthony B. Geronimo could not be found at said given address despite diligent efforts exerted.

On May 26, 2023, the Court noted the *Return of the Warrant of Arrest* and ordered that an *Alias Warrant of Arrest* be issued against the accused. The Court also directed the prosecution and the Commissioner of Internal Revenue to exert efforts in determining the exact whereabouts of the said accused for his early apprehension.[3]

An *Alias Warrant of Arrest*[4] dated June 13, 2023 was issued against the accused.

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[2] Docket, pp. 77-80.
[3] Resolution dated May 26, 2023, Docket, p. 86.
[4] Docket, p. 88

On August 23, 2023, the Court received a Letter[5] from Police Lieutenant Colonel David A. Toctocan Jr., Officer in Charge, Detective and Special Operations Unit, National Police Commission, Philippine National Police, Criminal Investigation and Detection Group, with attached Certification issued by Punong Barangay Margarita P. Limbaro on July 17, 2023, stating that accused Marc Anthony B. Geronimo cannot be located at the given address stated in the *Alias Warrant of Arrest* dated June 13, 2023.

Meanwhile, upon a re-examination of the records and the factual antecedents obtained in the instant case, the Court finds that this case should be dismissed on the ground of prescription.

We explain.

Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, governs the prescriptive period for filing criminal actions for violations of the 1997 NIRC, as amended, to wit:

> 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. (*Boldfacing supplied*)

The foregoing provision presents two modes for the commencement of the period of prescription:

1. *First Mode*: From the day of the commission of the violation of the law; or

[5] Docket, p. 90.

2. *Second Mode*: When the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment.

In both instances, the period is interrupted when proceedings are instituted against the guilty persons.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[6] (*Lim case*), the Supreme Court elucidated the point when a prescription for criminal violation of the provisions of the NIRC involving the taxpayer's refusal to pay the deficiency income taxes due commences, *viz.*:

> "Relative to Criminal Case Nos. 1788 and 1789 which involved **petitioners' refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while **the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served** on petitioners' daughter-in-law.
>
> **We hold for the Government**. Section 51 (b) of the Tax Code provides:
>
>> '(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*'
>
> **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 willful refusal to pay the taxes due within the allotted 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**." (*Boldfacing supplied*)

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[6] G.R. Nos. L-48134-37, October 18, 1990.

The foregoing pronouncement was circularized through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[7] which stated:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990 in the case entitled "*Emilio E. Lim, Sr., et al. vs. Court of Appeals, et al.*", G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
> (a) **The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay**. (*Boldfacing supplied*)
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> xxx xxx xxx

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the date of the commission of the offense, which is after the receipt of the final notice and demand and the taxpayer refuses to pay. The period continues to run until the filing of the *Information* in Court.

In the *Complaint-Affidavit*[8] dated May 2014 and signed by Revenue Officers Charmaine S. Morales and Grace S. Lazo, they stated that:

> 7. The antecedent facts leading to the said deficiency income tax and VAT liabilities are as follows:
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> xxx xxx xxx

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[7] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

[8] Docket, pp. 13-16.

m. On December 15, 2009, Final Assessment Notices and Formal Letter of Demand No. 30664 (FAN/FLD) were issued against DENHART INTERNATIONAL COMPANY, requiring it to pay on or before **January 15, 2010,** to the following:

Taxable Year – 2006	
Deficiency Income	P4,102,887.84
Deficiency Expanded Withholding Tax	P3,735.23
Deficiency Final Withholding Tax	P56,377.32

n. The Assessment Notices/Formal Letters of Demand above mentioned were likewise served to DENHART INTERNATIONAL COMPANY, via registered mail. It was received by subject taxpayer's authorized representative certain Cherry Geronimo on January 6, 2010, as evidenced by Registry Return Notice covered by Registry Receipt No. 524 dated December 29, 2009;

xxx xxx xxx

r. As per Memorandum dated July 31, 2012 of RO Grace S. Lazaro, **she said that was (sic) able to convince the taxpayer to pay its tax obligations in installment.** Accordingly, **the subject taxpayer initially paid some of its tax liabilities in the amount of P2,004.31, P3,000.00, and P30,251, respectively,** as evidenced by Compromise Settlement Payment Form (0608) and Compromise Settlement Payment Form (0608);

s. However, after several months **the taxpayer defaulted its installment payments despite several calls and follow ups,** it ignored and evaded the continuation of aforesaid installment payments.

t. On February 23, 2013, Final Notice Before Filing Criminal Complaint signed by the Chief, Legal Division, Ferdinand M. De Leon, of Revenue Region No. 5 was sent to the subject taxpayer addressed thru its president/general manager, MARC ANTHONY GERONIMO.

8. The Assessment Notices/Formal Letters of Demand mentioned in paragraph No. m are already final and incontestable as DENHART INTERNATIONAL COMPANY failed to file the required administrative protest set forth under Section 228 of the NIRC of 1997 hereby quoted, to wit: xxx

Admittedly, the Assessment Notices/Formal Letters of Demand assessing DENHART INTERNATIONAL COMPANY were issued on December 15, 2009, and the same were received by DENHART INTERNATIONAL COMPANY on January 6, 2010.

Pursuant to Section 228[9] of the NIRC of 1997, as amended, DENHART INTERNATIONAL COMPANY had thirty (30) days from January 6, 2010, or until February 5, 2010, to file its protest. Allegedly, DENHART INTERNATIONAL COMPANY failed to file the required administrative protest set forth under Section 228 of the NIRC of 1997, as amended; thus, the assessments issued against DENHART INTERNATIONAL COMPANY became final and executory on **February 6, 2010**.

Based on the foregoing, and following the ruling in *Lim*, the five (5)-year prescriptive period to indict the accused for failure to pay tax lapsed on **February 6, 2015**. Thus, the right of the government to institute the case against the accused had already prescribed when the *Information* was filed before this Court on **April 13, 2023**, or more than **thirteen (13) years** after the assessments attained finality.

Even assuming, for the sake of argument, that the 5-year prescriptive period is counted from February 23, 2013 (*i.e.*, when the Final Notice Before Filing Criminal Complaint was issued after the accused defaulted in its installment payments), still, the filing of the *Information* on April 13, 2023, was already barred by prescription.

Indeed, the failure of the prosecution to timely file the *Information* in Court within the five (5)-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, is fatal to its cause.

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[9] SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *xxx*

WHEREFORE, premises considered, CTA Crim. Case No. O-1031 is **DISMISSED** because of the prescription of the offense charged.

The *Warrant of Arrest* and *Alias Warrant of Arrest* dated April 28, 2023 and June 13, 2023, respectively issued against accused MARC ANTHONY B. GERONIMO, are **RECALLED** and **SET ASIDE**.

The Letter filed by Police Lieutenant Colonel David A. Toctocan Jr., Officer in Charge, Detective and Special Operations Unit, National Police Commission, Philippine National Police, Criminal Investigation and Detection Group on August 23, 2023, is **NOTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice