REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

RONALD G. CASTRO,
(164 Abacan St., Calvario, Meycauyan, Bulacan)
At Large,
Accused.

CTA Crim. Case Nos. O-1088, O-1089, and O-1090
(NPS Docket No. XVI-INV-11D-00176)
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended (Willful Failure to File Income Tax Returns

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

NOV 09 2023
4:04 p.m.

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RESOLUTION

On August 30, 2023, the Department of Justice (DOJ) filed three (3) Informations against the accused, Ronald G. Castro, accusing him of violating Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, for taxable years (TYs) 2005, 2006, and 2007, which read as follows:

<u>CTA Crim. Case No. O-1088</u>

> "The undersigned prosecutor of the Department of Justice, hereby accuses **RONALD G. CASTRO** for his willful failure to file income tax return, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:
>
> > That on or about April 2006, in Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino citizen residing in the Philippines, and required by law, rules and regulations to file his annual income tax return, having source of income in the

> amount of Sixty Million Six Hundred Eleven Thousand Five Hundred Sixty Eight Pesos and Ninety Five Centavos (P60,611,568.95) did, then and there, willfully, unlawfully and feloniously fail to file his income tax return and pay the corresponding tax for taxable year 2005 which resulted in a basic deficiency income tax of Nineteen Million Three Hundred Fifty Thousand Four Hundred Sixty Two Pesos and Six Centavos (P19,350,462.06), exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

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<u>CTA Crim. Case No. O-1089</u>

"The undersigned prosecutor of the Department of Justice, hereby accuses **RONALD G. CASTRO** for his willful failure to file income tax return, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about April 2007, in Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino citizen residing in the Philippines, and required by law, rules and regulations to file his annual income tax return, having source of income in the amount of Four Hundred Eighty Five Million Five Hundred Sixty Eight Thousand Sixty Four Pesos and Thirty Three Centavos (P485,568,064.33) did, then and there, willfully, unlawfully and feloniously fail to file his income tax return and pay the corresponding tax for taxable year 2006 which resulted in a basic deficiency income tax of One Hundred Fifty Five Million Three Hundred Forty Six Thousand Seven

> Hundred Eighty Pesos and Fifty Nine Centavos (P155,346,780.59), exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

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CTA Crim. Case No. O-1090

"The undersigned prosecutor of the Department of Justice, hereby accuses **RONALD G. CASTRO** for his willful failure to file income tax return, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or about April 2008, in Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino citizen residing in the Philippines, and required by law, rules and regulations to file his annual income tax return, having source of income in the amount of eight Hundred Three Million Two Hundred Thirty Nine Thousand Four Hundred Seventy Two Pesos and Ninety Five Centavos (P803,239,472.95) did, then and there, willfully, unlawfully and feloniously fail to file his income tax return and pay the corresponding tax for taxable year 2007 which resulted in a basic deficiency income tax of Two Hundred Fifty Seven Million One Thousand Six Hundred Thirty One Pesos and Thirty Four Centavos (P257,001,631.34), exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

These Informations were the result of the DOJ Resolution dated January 7, 2015 where the accused was charged of five (5) counts of attempt to evade or defeat tax and five (5) counts of failure to file Annual Income Tax Returns (AITRs) for TYs 2005 to 2009. Said recommendation was based on the letter referral of the Commissioner of the Bureau of Internal Revenue (BIR) and Joint Complaint-Affidavit, both dated April 28, 2011, of the revenue examiners who conducted the tax investigation on the income earned by the accused for the said periods.

It appears from the said Joint Complaint-Affidavit that the accused had sale transactions of gold to the Bangko Sentral ng Pilipinas (BSP) for the said taxable periods and earned income in the process. However, upon verification with the BIR records, the accused failed to file the corresponding AITRs for the said income. Hence, the referral to the DOJ.

Section 3(a) and (c), Rule IV of the Internal Rules of the Court of Tax Appeals provides:

> "Sec. 3. *Consolidation of cases.* – When related cases are assigned to different Justices, they may be consolidated and assigned to one Justice:
>
> (a) Consolidation of cases may be allowed at the instance of a party with notice to the other party or **at the instance of the Justice to whom the case is assigned**:
>
> xxx xxx xxx
>
> (c) A corresponding Resolution shall be prepared .... The Resolution shall state the ground/s and reason/s for the allowance or disallowance of the consolidation...." (*Emphasis supplied*)

Similarly, in **CTA A.M. No. 13-09-2023**, where the Court *En Banc* approved the Raffle Committee's Resolution dated August 10, 2023 which pertains to raffle of cases involving same parties, resolves that cases involving the same parties shall be raffled to one Justice only, and that said cases are not automatically consolidated but shall be determined if they are related to be subjected for consolidation under the abovementioned provision.

Considering that these cases which were all raffled to the Office of Associate Justice Catherine T. Manahan involve similar parties and the result of a single tax investigation, single Joint Complaint-Affidavit, single referral letter from the Commissioner of the BIR, and one Resolution of the DOJ, the cases are hereby *moto proprio* consolidated.

Going now to the determination of probable cause, the Court finds no merit thereon for being filed out of time.

Initial perusal of said Informations apparently show that the same has satisfied the requisites under Section 6, Rule 110[1] of the Rules of Court. It appears to be supported by the Prosecutor's Resolution dated January 7, 2015, certified true copies of the Subpoenas which indicate the conduct of preliminary investigation, Referral Letter dated April 28, 2011 by the Commissioner of Internal Revenue (CIR) to the Secretary of Justice for preliminary investigation and filing of Informations and Joint Complaint-Affidavit of the complainants with annexes and the counter affidavits of the accused.

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.[2]

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[1] Rule 110 Prosecution of Offenses
Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[2] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Jurisprudence[3] 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.

Section 281 of the 1997 NIRC, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> **"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.[4]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the 1997 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.

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[3] *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.,* G.R. No. 127777, October 1, 1999.

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

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[5], accused therein were charged for their refusal to pay deficiency income tax (IT) due for TYs 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:

> "... 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**..." (*Boldfacing supplied*)

Then came the *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*[6] case (*Tupaz* 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**

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[5] *G.R.* Nos. L-48134-37, October 18, 1990.
[6] G.R. No. 127777, October 1, 1999.

action was instituted within the five (5) year prescriptive period. ..."

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 1997 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*)

From the aforequoted provision of the RRCTA, the period of prescription for a tax case shall be tolled by the filing of an Information with this Court. Thus, the tax offenses in CTA Crim. Case Nos. O-1088, O-1089, and O-1090 are barred by prescription, as tabled below:

Date of Commission	Date of Discovery and Institution of Judicial Proceedings for Investigation and Punishment	Start of Five (5)-Year Prescriptive Period in Section 281 of the 1997 NIRC, as amended	End of Five (5)-Year Prescriptive Period in Section 281 of the 1997 NIRC, as amended	Date of Filing of Information with the Court

Unknown at the time	April 28, 2011 – Date of the BIR's filing of Joint Complaint Affidavit with the Department of Justice regarding accused's deliberate non-filing of his Annual Income Tax Return for Taxable Years 2005 to 2009	April 28, 2011	April 28, 2016	August 30, 2023

WHEREFORE, premises considered, plaintiff's Informations under CTA Crim Case Nos. O-1088, O-1089, and O-1090 are hereby **DISMISSED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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

HENRY S. ANGELES
Associate Justice