REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

JOSE LIM PAW
(No. 321 San Fernando St.,
San Nicolas, Manila),
Accused.

CTA Crim. Case No. O-676
(NPS Docket No. XVI-INV-15J-00385)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

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

Promulgated:

JUN 20 2024
11:48 a.m.

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RESOLUTION

On June 5, 2018, an Information was filed against accused Jose Lim Paw. Said accused were charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

For easy reference, the accusatory portion of the Information reads:

> "That on or about February 2014, in San Nicolas, Manila City and within the jurisdiction of this Honorable Court, the above-named accused, being the proprietor of Wonderful Travel and Tours, with obligation under the law to file income and tax returns and pay the correct income tax, did then and there, willfully, unlawfully and knowingly fail to pay deficiency income tax for taxable year **2007**, despite final assessment and formal demand to pay, including the services of several prior and post notices and demands, latest was the final notice before seizure dated February 17, 2014, to the damage and prejudice of the Government in the amount of Thirteen Million Nine Hundred Eighty Nine Thousand Eight Hundred Ninety Eight and 5/100 Pesos only **(Php13,989,898.05)**, exclusive of surcharges and interest.
>
> CONTRARY TO LAW."

Meanwhile, the following documents were attached to subject Information:

1. Resolution dated June 1, 2017 issued by Assistant State Prosecutor Alejandro C. Daguiso, recommending the filing of Informations against the accused for violation of Section 255 of the 1997 NIRC, as amended, for the crime of willful failure to pay deficiency income tax (IT) and value added tax;

2. Referral Letter dated October 15, 2015 for preliminary investigation and filing of information against accused Paw, issued by Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares; and

3. Complaint Affidavit of Revenue Officer (RO) Jefferson T. Ocampo, executed on October 15, 2015, without any attachments.

On June 22, 2018, the Court issued a Resolution requiring the submission of Annexes "A" to "Y" which were stated in the abovementioned affidavit.[1]

On July 5, 2018, plaintiff submitted a Compliance together with the following certified copies of:

a. Letter Notice (LN) No. 029-RLF-07-00-00056 dated July 24, 2009 with Details of Taxpayer's Suppliers' Records;[2]
b. Follow-Up Letter dated August 18, 2009 addressed to accused Paw;[3]
c. Notice for Informal Conference dated November 16, 2009 with Response to Findings Pursuant to Section 228 of NIRC;[4]
d. Letter of Authority with No. LOA 200900008754 dated November 16, 2009;[5]
e. Preliminary Assessment Notice dated July 1, 2010 with Details of Discrepancies;[6]

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[1] Docket, CTA Crim. Case No. O-676, pp. 24-26
[2] *Id.*, Annex "A", pp. 29-30.
[3] *Id.*, Annex "B", p. 31.
[4] *Id.*, Annex "C", pp. 32-33.
[5] *Id.*, Annex "D", p. 34.
[6] *Id.*, Annex "E", pp. 35-37.

f. Bureau of Internal Revenue (BIR)'s List of registered mails which include the name of accused Paw;[7]
g. Registry Return Card;[8]
h. Assessment Notice No. F-029-LNTF-07-IT-007 dated November 16, 2009;[9]
i. Assessment Notice No. F-029-LNTF-07-VT-007 dated November 16, 2009;[10]
j. Final Assessment Notice dated April 1, 2011 with Details of Discrepancies;[11]
k. Registry Return Card;[12]
l. Preliminary Collection Letter dated August 28, 2013;[13]
m. Registry Receipt;[14]
n. Registry Return Card;[15]
o. Final Notice Before Seizure dated February 17, 2014;[16]
p. Philpost Acknowledgment Receipt;[17]
q. Warrant of Distraint and/or Levy No. AMT-WDL-2014-0969 dated May 7, 2014;[18]
r. Warrant of Garnishment No. AMT-WG-2014-9321 dated May 9, 2014;[19]
s. Warrant of Garnishment No. AMT-WG-2014-9324 dated May 9, 2014;[20]
t. Warrant of Garnishment No. AMT-WG-2014-9318 dated May 9, 2014;[21]
u. Warrant of Garnishment No. AMT-WG-2014-9319 dated May 9, 2014;[22]
v. Warrant of Garnishment No. AMT-WG-2014-9323 dated May 9, 2014;[23]
w. Warrant of Garnishment No. AMT-WG-2014-9317 dated May 9, 2014;[24]

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[7] Docket, Annex "F", p. 38.
[8] *Id.*, Annex "G", p. 39.
[9] *Id.*, Annex "H", p. 40.
[10] *Id.*, Annex "I", p. 41.
[11] *Id.*, Annex "J", pp. 42-44.
[12] *Id.*, Annex "K", p. 45.
[13] *Id.*, Annex "L", p. 46.
[14] *Id.*, Annex "M", p. 47.
[15] *Id.*, Annex "N", p. 48.
[16] *Id.*, Annex "O", p. 49.
[17] *Id.*, Annex "P", p. 50.
[18] *Id.*, Annex "Q", p. 51.
[19] *Id.*, Annex "R", p. 52.
[20] *Id.*, Annex "S", p. 53.
[21] *Id.*, Annex "T", p. 54.
[22] *Id.*, Annex "U", p. 55.
[23] *Id.*, Annex "V", p. 56.
[24] *Id.*, Annex "W", p. 57.

x. Warrant of Garnishment No. AMT-WG-2014-9322 dated May 9, 2014;[25] and
y. Memorandum dated July 28, 2014.[26]

On July 12, 2018, the Court issued a Resolution[27] declaring the existence of probable cause for the issuance of warrants of arrest against accused Paw.

On September 24, 2018, the case was transferred to the Court of Tax Appeals (CTA) First Division.[28]

On October 29, 2018, the warrant of arrest was returned but not served because there was no accused Paw located in the indicated address. Hence, an Alias Warrant of Arrest was ordered to be issued.[29]

On July 29, 2019, considering that the accused has not yet been apprehended, the Court issued a Resolution[30] where it archived the instant case.

On May 23, 2023, the case was assigned in CTA Third Division due to reorganization of the Court in Division in view of the retirement of Justice Erlinda P. Uy.[31]

After revisiting and reviewing the records of the present case, the Court resolves to dismiss the same on the ground of prescription.

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.

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[25] Docket, Annex "X", p. 58.
[26] *Id.*, Annex "Y", p. 59.
[27] *Id.*, Resolution dated July 12, 2018, pp. 61-62.
[28] *Id.*, Order dated September 24, 2018, p. 70.
[29] *Id.*, Resolution dated October 29, 2018, p. 73.
[30] *Id.*, Resolution dated July 29, 2019, pp. 78-79.
[31] *Id.*, CTA Administrative Circular No. 01-2023 dated May 23, 2023, p. 95.

> 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.[32]

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.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[33], accused therein were charged for their refusal to pay deficiency IT due for taxable years (TY) 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**

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[32] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.
[33] G.R. Nos. L-48134-37, October 18, 1990.

prescriptive period and are not time-barred..." (*Boldfacing supplied*)

Then came the *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*[34] 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 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 Department of Justice (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

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[34] G.R. No. 127777, October 1, 1999.

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*)

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.

In the instant Information, accused Paw is being charged for failure to pay his Income Tax Deficiency for TY 2007 in the amount of Php13,989,898.05.

Likewise, it was also alleged by RO Jefferson T. Ocampo, in his Complaint Affidavit,[35] that the accused had been served with the Assessment Notices and a Formal Letter of Demand with Details of Discrepancies through registered mail and yet failed to file an administrative protest. Hence, the assessment became final, executory, and demandable.

Based on the records of the case, as shown in the Registry Return Card, marked as Annex "K",[36] the registered mail was received by a certain Sarah Delgado on April 26, 2011.

There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained

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[35] Docket, pp. 18-19.
[36] *Supra*, Note 12.

finality on May 26, 2011. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on May 26, 2011.

Counting from May 26, 2011, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on May 26, 2016. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on June 5, 2018.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription.

ACCORDINGLY, CTA Crim. Case No. O-676 is **DISMISSED** on the ground of prescription.

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