REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1005** (NPS Docket No. XVI-INV-19E-00197) For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	**Members:**
	DEL ROSARIO, ***PJ, Chairperson,*** **MANAHAN, and REYES-FAJARDO** ***JJ.***
ARMANDO DAVID LAGAMSON, (Golden Fortress Enterprise) Between 10th and 11th Avenue, 5th Street, Brgy. 90, Caloocan City, (AT-LARGE) *Accused.*	Promulgated: MAR 30 2023; 3:14 PM

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RESOLUTION

In the Resolution dated February 21, 2023, the Court directed the prosecution to submit proof of actual receipt of the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD).

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals.

> SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.** If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. **In case of doubt on the existence of probable cause, the**

> **Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice".** (Emphasis supplied)

On March 3, 2023, the prosecution filed a Manifestation submitting copies of the Final Assessment Notices and Formal Letter of Demand. The Prosecution likewise submitted an Affidavit of Service of Final Assessment Notice (FAN) showing that the aforementioned documents were sent thru registered mail.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On December 6, 2022, an Information was filed against accused **ARMANDO DAVID LAGAMSON** indicting him of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The accusatory portion of which states:

> That on October 26, 2016 and thereafter, in Caloocan City, Philippines and within the jurisdiction of this Honorable Court, accused ARMANDO DAVID LAGAMSON, being the sole proprietor of Golden Fortress Enterprise with registered address at between 10th and 11th Avenue, 5th Street, Brgy. 90, Caloocan City, required by law to file Income Tax return, and to pay the corresponding Income Tax under Sections 56 (A)(2) and 24 (A)(1)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, knowingly, consciously and willfully fail to pay his deficiency income tax in the amount of **THREE MILLION TWENTY FIVE THOUSAND FIVE HUNDRED EIGHTY THREE Pesos and FORTY FOUR Centavos (Php3,025,583.44)**, exclusive of increments, surcharges and penalties, for the taxable year 2012, despite the fact that the assessment was issued pursuant to a letter of authority and receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) issued after tax investigation, including collection letter, prior and post-notices and notice to pay, the latest of which being in the nature of Final Notice Before Seizure dated October 26, 2016, and his failure to file a protest on said deficiency tax assessment within the prescribed period, renders said assessment final, thus his failure to pay resulted to the damage and prejudice of the Government of the Republic of the Philippines.
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> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated September 20, 2019 issued by Assistant State Prosecutor Phillip L. Dela Cruz, recommending that **ARMANDO DAVID LAGAMSON** be charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended;

2. A letter dated May 21, 2019 of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused **ARMANDO DAVID LAGAMSON**; and

3. Complaint Affidavit (CA) of James L. Alberto, Zenaida Tarroza and Mark Filmer T. Juan dated May 23, 2019 and filed with the DOJ on even date, with the following attachments:

a. Letter Notice dated June 25, 2014;[1]
b. Letter of Authority dated August 24, 2015;[2]
c. First Request for Presentation of Records;[3]
d. Second and Final Request for presentation of records before the Issuance of Subpoena Duces Tecum;[4]
e. Preliminary Assessment Notice;[5]
f. Registry Receipt;[6]
g. Affidavit of Service of Preliminary Assessment Notice (PAN);[7]
h. Assessment Notice dated July 28, 2016;[8]
i. Registry Receipt;[9]
j. Preliminary Collection Letter dated October 12, 2016;[10]
k. Registry Receipt;[11] and

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1 Annex "A," CA.
2 Annex "B," CA.
3 Annex "C," CA.
4 Annex "D," CA.
5 Annex "E," CA.
6 Annex "E-1," CA.
7 Annex "F," CA.
8 Annexes "G," CA.
9 Annex "G-1," CA.
10 Annex "H," CA.

l. Final Notice Before Seizure dated October 26, 2016.[12]

OUR RULING

This case merits outright dismissal.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[13] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the wilful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> 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 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)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the Affidavit of Service of Final Assessment Notice (FAN) submitted by the prosecution showed that the FAN and FLD both dated July 28, 2016 were sent to accused through registered mail on August 1, 2016. However, the prosecution failed to submit any proof that the FAN and FLD were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is

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11 Annex "H-1," CA.

12 Annex "I," CA.

13 G.R. Nos. 48134-37, October 18, 1990.

insufficiency to show that the accused sought to be arrested probably committed the crime charged.

Assuming for the sake of argument that accused indeed received the alleged FAN and FLD, the case should still be dismissed on the ground that the Information was filed beyond the five-year prescriptive period provided under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 281 of the NIRC of 1997, 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.

In the present case, the information states that the crime of unlawful and willful failure and refusal to pay taxes was allegedly committed "on October 26, 2016 and thereafter". Considering that the subject Information was filed before this Court on December 6, 2022 or more than six (6) years from the alleged date of the commission of the crime, it is clear that the subject Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

Further, the Commissioner of Internal Revenue (CIR)'s agents committed a mishap in the filing of this case. Section 220 of the NIRC reads:

> **Sec. 220.** *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.**[14]

As it stands, Section 220 of the NIRC commands that approval of the CIR, or her duly authorized representative is a condition *sine qua non, prior* to filing of an action for criminal infractions under said Code.

Here, Zenaida Tarroza and Mark Filmer T. Juan executed the JCA on May 23, 2019. So was the Certification in the Department of Justice (DOJ) Investigation Data Form subscribed by said persons on May 23, 2019. However, the supposed authority to file criminal charges against accused Armando David Lagamson was issued by then CIR Caesar R. Dulay (Dulay) on May 21, 2019. Indeed, how can then CIR Dulay evaluate, and approve such CA on May 21, 2019, when said CA was executed only on May 23, 2019? This observation yields a single conclusion—the CA filed before the DOJ, leading to the filing of the present case has no prior permission from the CIR. Hence, dismissal of this case is warranted.

WHEREFORE, the instant Information docketed as CTA Crim. Case No. O-1005 is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause and by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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14 Boldfacing supplied.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice