REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-677** For: Violation of Section 255 of the NIRC of 1997, as amended
- versus -	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
JOSE LIM PAW, (No. 321 San Fernando St., San Nicolas Manila) (At-Large, Accused.	Promulgated: AUG 1 4 2024 9:20 a.m.

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RESOLUTION

To recall, on June 5, 2018, the prosecution filed the *Information* dated June 1, 2017[1] against herein accused **JOSE LIM PAW**, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay deficiency Value-Added Tax (VAT) for taxable year (TY) 2007 despite several notices and demands.

Thereafter, upon the prosecution's submission of the complete documents as ordered by the Court,[2] a Warrant of Arrest was issued against the accused on September 11, 2018.[3]

The Court, in the Resolution dated November 22, 2018,[4] ordered the issuance of Alias Warrant of Arrest[5] against the accused.

Subsequently, or on June 27, 2019, the case was archived, without prejudice to its revival immediately upon accused's apprehension.[6]

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1 Docket pp. 6 to 7.
2 Resolution dated September 7, 2018, Docket pp. 80-82.
3 Docket p. 125.
4 Docket p. 132.
5 Docket p. 135.
6 Docket p. 140.

Upon a careful evaluation of the records, as will be discussed below, this Court finds that the government's right to institute the criminal action has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: *(1)* the period of prescription for the offense charged; *(2)* the time the period of prescription starts to run; and *(3)* the time the prescriptive period was interrupted.[7]

Section 281 of the NIRC of 1997, as amended, 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. *(Emphasis supplied)*

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years. Prescription begins to run *(1)* from the day of the commission of the violation of the law; and *(2)* if 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 *judicial* proceedings are instituted against the guilty persons.[8]

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[9] (*Lim* case), which provides that, for purposes of the commencement of the prescriptive period in relation to the charge of refusal to pay deficiency taxes due, said violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.

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[7] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan.*

[8] *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer),* CTA EB Crim. No. 090, June 21, 2023.

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

In addition, in *Tupaz vs. Ulep*[10] (*Tupaz* case), the Supreme Court, citing the *Lim* case, held that the offense of **failure to pay deficiency taxes** is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period. We quote:

> Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. 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. (*Emphasis supplied*)

In the present case, the *Final Assessment Notice* (FAN) and Assessment Notices were issued on April 1, 2011 and were served on accused through registered mail.[11] The registry return receipt shows that a certain Sarah Delgado, whose signature appears thereon as addressee's agent, received the FAN and Assessment Notices on April 26, 2011.[12] For failure of accused to file a protest against the FAN, the assessment against him then attained finality thirty (30) days from receipt, or on May 26, 2011. It is at this point that the offense was committed since the lack of any action after the accused's receipt of the FAN indicates that the accused refused to pay the tax liability despite demand.

Counting from the finality of the assessment on **May 26, 2011**, the *Information* should have been filed before this Court within five (5) years from May 26, 2011, or until **May 26, 2016**. Clearly, when the *Information* was filed before this Court on **June 5, 2018**, more than two (2) years have passed since the government's right to institute a criminal action prescribed.

WHEREFORE, premises considered, CTA Criminal Case No. O-677 is hereby **RETRIEVED** from the archives and, accordingly, **DISMISSED** on the ground of prescription.

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

[11] Par. 9 of the *Complaint-Affidavit*, Docket p. 16; Annexes H to K of the *Complaint Affidavit,* Docket, pp. 59 to 64.

[12] Docket, p. 64.

Furthermore, the Alias Warrant of Arrest issued against the accused is **RECALLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice