REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

ANTONIO VALERIANO M. BERNARDO, (A.V.M. BERNARDO ENGINEERING)
(AT LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila),
Respondent.

CTA EB CRIM. NO. 121
(CTA Crim. Case No. O-934)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

JAN 26 2024 4:00 pm

x- x

D E C I S I O N

ANGELES, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner People of the Philippines praying that the Resolutions, dated February 28, 2023 and April 27, 2023, be reversed and set aside; to issue a warrant of arrest against respondent; and to set the case for arraignment and pre-trial.

The Facts

Petitioner People of the Philippines is represented by Bureau of Internal Revenue (BIR), a government agency mandated to collect national revenue taxes, and is further represented by Commissioner of Internal Revenue (CIR) through Revenue Officers Gina D. Floreza and Grace G. Marohomsalic, with office address at c/o Rm. 704, BIR

National Office Building, BIR Road, Diliman, Quezon City, where summons, notices and other legal processes may be served.[1]

Respondent Antonio Valeriano M. Bernardo is the Sole Proprietor of A.V.M. Bernardo Engineering, engaged in the design, fabrication and installation of all food processing and slaughterhouse equipment. He is likewise a food consultant of hog and cattle line, and a food plant designer, with business address at 604 T. Santiago St., Lingunan, Valenzuela City.[2]

The Information in CTA Crim. Case No. O-934 states:

> The undersigned accuses Antonio Valeriano M. Bernardo of Violation of Section 255 of the 1997 National Internal Revenue Code, committed as follows:
>
>> That sometime in the month of April 2014, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO VALERIANO M. BERNARDO, Filipino citizen, a registered taxpayer with Tax Identification Number (TIN) 147-851-256, being a registered sole owner of the business enterprise under the name and style "A.V.M. Bernardo Engineering", filed his income tax return (ITR) for the taxable year 2013, as required under Section 51 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, willfully, unlawfully and feloniously fails to supply correct and accurate information in his 2013 income tax return (ITR), when said accused declared in the same return only the amount of Twenty One Million Two Hundred Thirty Two Thousand Four Hundred Sixteen Thousand Pesos (Php21,232,416.00) as his true and correct sales/revenues/receipts for the said year, when in truth and in fact, his total gross taxable per audit of the Bureau of Internal Revenue amounted to Forty Two Million Thirty Nine Thousand Eight Hundred Forty Thousand Pesos and 58/100 Centavos (Php42,039,840.58) with a total of unreported sales/underdeclaration of ninety eight percent (98%) in the amount of Twenty Million Eight Hundred Seven Thousand Four Hundred Twenty Four Pesos and 58/100 Centavos (Php20,807,[424].58) that resulted to his failure to pay the correct amount of the basic deficiency income tax liability totalling Seven Million One Hundred Seventy Six Thousand Three Hundred Sixty Nine Pesos and 30/100 centavos (Php7,176,369.30), exclusive of interest and increments, to the damage and prejudice of the government.

[1] Par. 7, Petition for Review, En Banc (EB) Docket, p. 3.
[2] Par. 8, Petition for Review, *id.*

CONTRARY TO LAW.[3]

On January 18, 2023, accused Antonio Valeriano M. Bernardo filed a Consolidated Motion to Quash and prayed that the Criminal Informations in CTA Case No. 0-931, CTA Case No. 0-932, CTA Case No. 0-933 and CTA Case No. 0-934 be quashed on the ground of prescription.

On January 31, 2023, petitioner filed a Comment/Opposition [Re: Consolidated Motion to Quash dated January 09, 2023].

On February 28, 2023, the Second Division granted the Consolidated Motion to Quash and dismissed the Information on the ground of prescription, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the accused's Consolidated Motion to Quash is **GRANTED**.
>
> Accordingly, this case is **DISMISSED** on the ground of prescription.
>
> **SO ORDERED.**[4]

The Motion for Reconsideration filed by the petitioner was likewise denied in the Resolution dated April 27, 2023.

On May 24, 2023, the instant Petition for Review was filed before the Court *En Banc*. Petitioner argues that prescription has not set in, as the period of discovery and the institution of judicial proceedings for the violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, against the respondent did not only trigger the commencement of the prescriptive period, but at the same time, the interruption of the same prescriptive period or the date of filing the complaint with the Department of justice (DOJ). Further, petitioner argues that respondent should be held liable for deliberate failure to supply correct and accurate information in his income tax return for taxable year 2013.

On May 30, 2023, respondent filed his Opposition, stating that the five (5)-year prescriptive period for violations of the 1997 NIRC, as amended, commences to run, if the day of the commission of violation is unknown, from the discovery thereof and institution of judicial

[3] Division Docket, CTA Crim. Case No. O-934, pp. 5-7.
[4] Division Resolution dated February 28, 2023, EB Docket, p. 29.

proceedings (which, in this case, is the date of filing of complaint before the DOJ or Prosecutor's Office) for its investigation and punishment.

Issue

Petitioner assigns the following error:

> The CTA-Second Division erred when it dismissed the case against respondent Bernardo for violation of Section 255 of the NIRC or deliberate failure to supply correct and accurate information in income tax return of taxable year 2013 on the ground of prescription.

Ruling of the Court

The Court will now look into the timeliness of the instant appeal, before delving into the substantive issues.

The Petition for Review was timely filed.

On May 4, 2023, petitioner received the Court in Division's Resolution dated April 27, 2023, denying its Motion for Reconsideration.

Pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from May 4, 2023 or until May 19, 2023, within which to file its petition for review with the Court *En Banc*.

On May 18, 2023, the instant Petition for Review was timely filed.

There is no compelling reason to reverse the Court in Division's findings.

The Court is consistent in its Resolutions dated February 28, 2023 and April 27, 2023 that the filing of the Information has prescribed.

The Court reiterates the same. Section 281 of the 1997 NIRC, as amended, provides:

n

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 date 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)

Section 2, Rule 9 of the RRCTA provides that:

Section 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 Republic 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.

The institution of criminal actions shall interrupt the running of the period of prescription. (Emphasis supplied)

In the Petition for Review, petitioner insisted that prescription has not set in. According to petitioner, the period of discovery and the institution of judicial proceedings for the violation of Section 255 of the 1997 NIRC, as amended, against the respondent not only triggers the commencement of the prescriptive period, but at the same time triggers the interruption of the same prescriptive period when the complaint was filed with the DOJ.

Further, petitioner emphasized that prescription for violations penalized by special acts is governed by Act 3226[5], as amended by Act 3763.

Petitioner's claim is untenable.

---

5 An Act to Establish Periods of Prescription for Violations Penalized by Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run.

The Court emphasizes that the Resolutions in the CTA-Second Division, dated February 28, 2023 and April 27, 2023, were consistent to pertinent laws, rules and jurisprudence.

Petitioner's claim that the five (5)-year prescriptive period had commenced and at the same time interrupted upon filing of the complaint with the DOJ is mistaken. Hence, there is no ground to reverse the Resolutions of the CTA Second Division.

The RRCTA clearly states that criminal actions are instituted upon filing of the Information with the Court, and such filing of the Information shall interrupt the running of the prescriptive period. This is likewise consistent with the ruling of the Supreme Court in the case of *Lim, Sr. vs. Court of Appeals*[6]. It must be noted that the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.

In the present case, the discovery and the institution of judicial proceedings for the preliminary investigation conducted by the DOJ commenced on February 18, 2016, from which date the prescriptive period likewise commenced. Thus, petitioner has until February 18, 2021 to file the Information. However, as shown in the records of the case, the Information was filed on September 6, 2022. Clearly, the Information was filed beyond the period prescribed by the law and the RRCTA.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions dated February 28, 2023 and April 27, 2023, rendered in CTA Crim. Case No. O-934, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

---

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice