REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

HI-BUILD CONSTRUCTION, INC., ROMEO P. AALA
(Don Jose, Sta. Rosa, Laguna)
RONALD P. SADSAD
(Pulo Cabuyao, Laguna)
(At-Large),
Accused.

CTA Crim. Case No. O-980
(NPS Docket No. XVI-INV-19B-00068)
For: Violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

APR 25 2023 10:20 AM

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RESOLUTION

On February 15, 2023, plaintiff, through the Bureau of Internal Revenue (BIR), posted a **Manifestation with Partial Compliance**, which was received by this Court on February 21, 2023, submitting the certified true copies of the following documents, to wit:

1. Letter of Authority dated October 19, 2013 (marked as Annex "A");

2. First Request for Presentation of Records dated November 11, 2013 (marked as Annex "B");

3. Second and Final Request for Presentation of Records dated December 4, 2013 (marked as Annex "C");

4. Subpoena Duces Tecum with SDT No. RR-9-D-2014-109 with Affidavit of Service of Subpoena Duces Tecum dated December 10, 2014 (marked as Annexes "D" to "D-1");

5. Preliminary Assessment dated November 26, 2015 with Acknowledgment Receipt (marked as Annexes "E" to "E-1");

6. Formal Letter of Demand dated January 4, 2016 with Details of Discrepancy and Acknowledgment Receipt (marked as Annexes "F" to "F-2");

7. Audit Results and Audit Notices dated January 4, 2016 (marked as Annexes "G" to "G-3");

8. Preliminary Collection Letter dated August 8, 2016 (marked as Annex "H"); and

9. Warrant of Distraint and/or Levy dated June 9, 2017 (marked as Annex "I").

Plaintiff also manifested that an Access Letter dated February 9, 2023 (marked as Annex "J") was sent to the Securities and Exchange Commission (SEC) requesting for a certified copy of the accused corporation's 2016 General Information Sheet (GIS). However, they were informed last February 13, 2023 that the requested document will be released within six (6) working days. Hence, plaintiff is requesting for an extension of ten (10) days from February 15, 2023 or until February 25, 2023 within which to complete its Compliance and Submission.

On February 27, 2023, plaintiff posted a **Manifestation with Compliance**, which the Court received on March 2, 2023, submitting the Certification of Corporate Filing/Information from the SEC (marked as Annex "A") and the accused corporation's GIS for the year 2013 (marked as Annex "B").

Plaintiff avers that the accused corporation did not file the GIS for the years 2014 to 2022 as evidenced by the abovementioned certification. Hence, the GIS for the year 2016 cannot be submitted.

Now, this Court shall resolve whether there is a probable cause for the issuance of warrant of arrest against 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.[1]

Jurisprudence[2] 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 National Internal Revenue Code (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.[3]

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.

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

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

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

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* [4], accused therein were charged for their refusal to pay deficiency income tax (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 prescriptive period and are not time-barred**..." (*Boldfacing supplied*)

Then came the *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.* [5] 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

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

> 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 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 are being charged for their failure to supply correct and accurate information in their Income Tax Return (ITR) and to pay their Income Tax Deficiency for taxable year 2012 in the amount of Php15,625,840.95.

Likewise, it was also alleged by the complainants-BIR Revenue Officers in their Joint Complaint-Affidavit that the accused failed to file a motion for reconsideration with the Commissioner of Internal Revenue or an appeal before this Court within thirty (30) days from receipt of the Formal Letter of Demand (FLD). Hence, the assessment became final, executory, unappealable, and demandable.[6]

It appears from the records of the case that the FLD dated January 4, 2016[7] covering the taxable year 2012 was served to and received[8] by accused on February 1, 2016.

There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on March 2, 2016. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on March 2, 2016.

Counting from March 2, 2016, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on March 2, 2021. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on December 5, 2022.

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.

WHEREFORE, premises considered, plaintiff's *Manifestation with Partial Compliance* and *Manifestation with Compliance* are hereby **NOTED**.

The Court finds no probable cause to issue a warrant of arrest against the accused Hi-Build Construction, Inc., Romeo

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[6] Docket, CTA Crim. Case No. O-980, Paragraph 11, Joint Complaint Affidavit, pp. 8-9.
[7] *Id.*, Annex F, Manifestation with Partial Compliance, pp. 99-100.
[8] *Id.*, Acknowledgement Receipt, Annex F-2, Manifestation with Partial Compliance, p. 103.

P. Aala and Ronald P. Sadsad, on the ground of prescription of the offense charged. Accordingly, CTA Crim. Case No. O-980 is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice