REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FAIVO PASCUAL BARTOLOME,
Accused.

CTA Crim. Case No. O-985
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 0 9 2023, 2:40PM

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RESOLUTION

On December 5, 2022, the prosecution filed an *Information* charging accused **Faivo Pascual Bartolome** for willful failure to pay taxes under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That on or about December 14, 2016, in Laoag City, Ilocos Norte, and within the jurisdiction of this Honorable Court, **accused FAIVO PASCUAL BARTOLOME**, owner and proprietor of Dashma Computer Systems and Services, and Ilocostop Convenience Stores, who is engaged in the wholesale and/or retail of electronics and in customer services, and in the operation of convenience stores, with Tax Identification Number 129-864-120-000 and who is required by law, rules and regulations to pay the correct amount of value-added tax pursuant to Section 105 and 106 of the National Internal Revenue Code (NIRC) of 1997, as amended, **did then and there, knowingly, willfully and unlawfully fail and refuse to pay deficiency value added tax** in the amount of Two Million Four Hundred Thirty-Seven Thousand One Hundred Fifty-four and 63/100 (Php 2,347,154.63) Pesos, exclusive of interest and surcharge, for taxable year 2012, despite the receipt of the Preliminary Assessment Notice with details of discrepancies, on December 14, 2015

> and of the Formal Letter of Demand and Final Assessment Notice with details of discrepancies, January 5, 2016, including prior and post notices and demands to pay, the last of which being the Second Collection letter dated December 14, 2016 and his failure to file a valid protest on the said assessment within the prescribed period, to the damage and prejudice of the Government of the Philippines in the aforesaid amount, exclusive of interest and surcharge.
>
> CONTRARY TO LAW. (*Emphasis supplied*)

In the Resolution[1] promulgated on January 10, 2023, the Court found probable cause to issue a warrant of arrest against the accused with a bail bond for his provisional liberty of ₱60,000.00, under the pertinent provisions of the 2018 Bail Bond Guide.

On February 28, 2023, the Court received the Transmittal Letter[2] of Atty. Xavier F. Gacho, Clerk of Court V and Acting Clerk of Court, Regional Trial Court, First Judicial Region, Laoag City, of the bail documents of the accused, filed through registered mail on February 21, 2023.

On March 10, 2023, the Court issued a Resolution[3] noting the said Transmittal Letter and the cash bail bond posted by the accused on February 14, 2023, in the amount of ₱60,000.00, as evidenced by Official Receipt No. 0504004E[4] before the Executive Judge Myra Shiela M. Nalupta, Regional Trial Court, First Judicial Region, Laoag City, who correspondingly issued an Order of Release[5] on even date. In the same Resolution, the Court ordered the parties to file their respective pre-trial briefs within five (5) days from notice.

Records verification on May 2, 2023 revealed that both parties failed to file their pre-trial briefs. Accordingly, both parties were ordered to show cause within five (5) days from notice why no sanction shall be imposed for their non-compliance with the Court's Resolution dated March 10, 2023.[6]

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[1] Docket, pp. 49-52.
[2] *Id.*, pp. 54-76.
[3] *Id.*, p. 80.
[4] *Id.*, p. 67.
[5] *Id.*, p. 70.
[6] Resolution dated May 26, 2023, *id.*, p. 83.

On June 13, 2023, the Court received the plaintiff's *Manifestation with Motion for Leave to Admit Pre-Trial Brief*,[7] which the Court admitted in its Resolution dated June 30, 2023. Accordingly, the arraignment of the accused and the pre-trial conference set on July 5, 2023 was cancelled and reset to August 16, 2023.

Upon records verification on July 12, 2023, the accused has yet to file his pre-trial brief.

Meanwhile, upon re-examining the records and the factual antecedents obtained in the instant case, the Court finds that this case should be *dismissed* on the ground of *prescription*.

We explain.

Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, governs the prescriptive period for filing criminal actions for violations of the 1997 NIRC, to wit:

> 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*)

The foregoing provision presents two modes for the commencement of the period of prescription:

1. *First Mode*: From the day of the *commission* of the violation of the law; or

2. *Second Mode*: When the day of the commission is unknown, from the *discovery of the commission* and the institution of judicial proceedings for its investigation and punishment.

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[7] *Id.*, pp. 85-93.

In both instances, the period is interrupted when proceedings are instituted against the guilty persons.

In *Lim, Sr. et al. v. Court of Appeals, et al.*[8] (*Lim*), the Supreme Court explained when a prescription for criminal violation of the provisions of the NIRC involving a taxpayer's refusal to pay the deficiency income taxes due commences, *viz.*:

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, the violations as charged **could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
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> We hold for the Government. Section 51 (b) of the Tax Code provides:
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> > "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)
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> **Inasmuch as the *final* notice and demand for payment of the deficiency taxes was served on petitioners on <u>July 3, 1968</u>, 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 allotted 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. (*Emphasis supplied*)

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[9] which stated:

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[8] G.R. Nos. L-48134-37, October 18, 1990.
[9] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.,*" G.R. Nos. L-48134-37.

1. *When cause of action for willful failure to pay deficiency tax occurs.*

   The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.

2. *Prescription under Section 280 of the Tax Code.*

   (a) **The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.** (*Emphasis supplied*)

Subsequently, in the case of *Tupaz v. Ulep* (*Tupaz*),[10] the Supreme Court affirmed that in willful non-payment of deficiency taxes, the five-year prescriptive period should commence to run after the *finality* of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period:

> 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

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

> preliminary investigation **was filed with the Department of Justice on <u>June 8, 1989</u>, the criminal action was instituted within the five (5) year prescriptive period.** (*Emphasis supplied*)

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, the date of commission of which is known, the five-year prescriptive period begins to run from the date the assessment notices became final and executory and continues to run until the filing of the *Information* in Court.

In this case, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) with Details of Discrepancies for deficiency value-added tax (VAT) was issued on December 21, 2015, and the accused's accounting staff received the same on January 5, 2016.[11]

On January 25, 2016, the accused filed a protest on the FLD/FAN but failed to meet the requirements of a valid protest under Revenue Regulations (RR) No. 18-2013; hence, he was given ten days from receipt of the letter reply to file another protest.[12]

On March 10, 2016, the accused filed another protest that the plaintiff received on March 14, 2016. In a letter dated March 29, 2016,[13] the BIR denied the accused's March 10, 2016 request for the same was filed out of time, making the assessment final, executory, and demandable.[14]

Hence, the BIR served Collection Letters on August 5, 2016, and December 14, 2016, to the accused to demand payment of his deficiency taxes, which were both unheeded.[15]

Under Section 228[16] of the NIRC, the cause of action accrued after the BIR served the notice and demand to pay, *i.e.*,

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[11] Par. 10, Joint Complaint-Affidavit, Docket, p. 21.
[12] Par. 11, *id.*, p. 21.
[13] Annex "H", Joint Complaint-Affidavit, Docket, p. 44.
[14] Par. 12, *id.*, p. 21.
[15] Pars. 14-15, *id.*, p. 22.
[16] SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

... ...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

FLD/FAN, to the accused on January 5, 2016.[17] Even with the demand to pay, the accused still refused to pay his deficiency taxes within the allotted period, as stated in the FLD/FAN. Neither did the accused file a valid protest within thirty (30) days from January 5, 2016, or until February 4, 2016, making the assessment final and executory on ***February 5, 2016***. Hence, the BIR posted the accused's tax case for enforcement of collection on March 17, 2016.[18]

Applying *Lim* and *Tupaz*, the five-year prescriptive period to indict the accused for failure to pay tax lapsed on ***February 5, 2021***. Thus, the right of the government to institute the case against the accused had already prescribed when the *Information* was filed before this Court on December 6, 2022.

WHEREFORE, premises considered, CTA Crim. Case No. O-985 is **DISMISSED** on the ground of prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *xxx*

[17] Par. 10, Joint Complaint-Affidavit, Docket, p. 21.

[18] Annex "H" of Joint Complaint-Affidavit, Docket, p. 44.