REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

ERNESTO NEVALGA MILLANES,
Accused.

CTA Crim. Case No. O-715
(NPS Docket No. XVI-INV-14L-00441)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

MAY 15 2024
2:06 p.m.

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R E S O L U T I O N

In the Resolution dated July 18, 2019, the Court found the existence of probable cause to hold the above-named accused for trial.[1]

Trial did not proceed as the accused remains at large in spite of the issuance and service of a warrant of arrest and several alias warrants of arrest in his last known address.

The above-captioned case was then archived pursuant to Administrative Circular No. 7-A-92, to be revived upon the apprehension of the accused.[2]

A second look at the records of this case reveals, however, that the case should be dismissed due to prescription of the crime charged.

Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, reads as follows:

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[1] Court Docket, pp. 114-117.
[2] Court Resolution dated January 6, 2021.

> "SECTION 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." (*Emphases supplied*)

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) relevantly provides, thus:

> "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 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.
>
> The institution of the criminal action shall interrupt the running of the period or prescription."

The Information filed in Court on April 29, 2019 charged the accused of willful failure to pay taxes under Section 255 of the 1997 NIRC, as amended, described as follows:

> "**SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be

> punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."

The Joint Complaint-Affidavit dated December 4, 2014[3] and the Prosecutor's Resolution dated January 8, 2018,[4] contain the allegation that the Bureau of Internal Revenue (BIR), through its authorized representatives, issued a Preliminary Assessment Notice (PAN) on June 5, 2012 followed by Final Assessment Notices and Formal Letter of Demand (FANs/FLD) on July 19, 2012, finding accused liable for deficiency income tax and value-added tax (VAT) for taxable year (TY) 2006.

The Joint Complaint-Affidavit and the Prosecutor's Resolution further allege that the PAN and the FANs/FLD were duly served upon the accused via registered mail but did not specify the dates when these were received by the accused. Both the Joint Complaint-Affidavit and the Prosecutor's Resolution assert that accused did not file any protests to the PAN as well as the FANs/FLD despite receiving such official notices via registered mail.

With only the date of issuance of the FANs/FLD on hand, this Court finds that the case should be dismissed on the ground of prescription. If received by accused on the date of issuance of the FANs on July 19, 2012 without any protest being filed, the assessment became final and executory on August 18, 2012 based on the provisions of Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "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: xxx xxx xxx
>
> The taxpayer 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

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[3] Court Docket, pp. 21-25.
[4] Court Docket, pp. 10-15.

his duly authorized representative shall issue an assessment based on his findings.

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.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty days (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) day period; otherwise the decision shall become final, executory and demandable." (*emphasis supplied*)

The plaintiff then had until August 18, 2017 within which to file an Information in Court. Records show that the Information was filed in Court only on April 29, 2019, thus breaching the five (5)-year limitation on institution of criminal actions in court.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[5] the Supreme Court, interpreting the above-quoted Section 281 of the 1997 NIRC, as amended (previously Section 354 of the NIRC), ruled that for as long as 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, the government's right to file an action will not prescribe. The Supreme Court ruled as follows:

"...As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that **tax cases, such as the present ones, are practically imprescriptible for as long as 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**.

xxx xxx xxx

Unless amended by the Legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its

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

> apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation." (*Emphasis supplied*)

Accordingly, premises considered, CTA Criminal Case No. O-715 is **DISMISSED** on the ground of prescription of the crime charged.

Let this case be removed from the archives and consider the same **CLOSED** and **TERMINATED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice