REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1010** (NPS Docket No. XVI-INV-19D-00137) For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
-versus-	
HALEIWA INTERNATIONAL CORPORATION, NICHOLSON C. SANTOS and JOSEPHINE CHEN (Unit 1207 World Trade Exchange Building 125 Juan Luna Street, Binondo, Manila) (316 A Bautista St., Quiapo, Manila) (AT-LARGE) *Accused.*	**Members:** **DEL ROSARIO,** ***PJ, Chairperson,*** **MANAHAN, and REYES-FAJARDO** ***JJ.*** Promulgated: MAR 03 2023 9:10 am

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RESOLUTION

On January 24, 2023, the Court issued a Resolution requiring the prosecution to amend the Information and submit proof of receipt of the Formal Assessment Notice (FAN) and Formal Letter of Demand (FLD) of the accused.

The Amended Information filed by the prosecution on February 6, 2023, in compliance with the aforementioned Resolution, is hereby **NOTED**.

On the same date, the prosecution filed a Motion for Extension of Time to Submit Compliance. In said motion, the prosecution alleged that the return card/proof of actual receipt of the FAN and FLD is yet to be retrieved from the Administrative Division of the Bureau of Internal Revenue, Region 6 which has the custody of documents pertaining to mail matters emanating from the BIR. Therefore, the prosecution prays for an extension of ten (10) days from February 5, 2023 or until February 15, 2023 within which to submit the required document. In the interest of justice, the prosecution's motion is hereby **GRANTED**.

On February 15, 2023, the prosecution filed a Manifestation stating that the Legal Division received a letter from the Administrative Division informing them that his office has no record on file of the requested return card.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On December 6, 2022, an Information was filed against accused Haleiwa International Corporation, Nicholson C. Santos and Josephine Chen indicting them of violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended. The accusatory portion of which states:

> That on or before October 5, 2017 and thereafter, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused **Haleiwa International Corporation, a registered domestic corporation, and accused Nicholson C. Santos and Josephine Chen**, its president and treasurer, respectively, required by law to file income tax returns and pay the income tax due thereon, did then and there willfully, unlawfully and intentionally fail and refuse to pay deficiency income tax in the amount of **P68,544,598.72** (excluding interest and penalties thereon) despite due assessment, notice and demand, the latest of which is the final notice before seizure dated October 5, 2017, which payment is required by the pertinent provisions of the National Internal Revenue Code of 1997, thereby depriving the government of the needed revenues to sustain public service, to its damage and prejudice.
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> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated June 29, 2020 issued by Assistant State Prosecutor Arlie Alilam-Ramos, recommending that accused Haleiwa International Corporation, Nicholson C. Santos and Josephine Chen be charged for violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended;

2. A letter dated April 11, 2019 of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Haleiwa International Corporation, Nicholson C. Santos and Josephine Chen; and

3. Complaint Affidavit (CA) of Olga Marie Dioso filed with the DOJ on April 11, 2019, with the following attachments:

a. Assessment Notices dated April 12, 2017;[1]
b. Formal Letter of Demand (Deficiency Income Tax) dated April 12, 2017;[2]
c. Formal Letter of Demand (Compromise Penalty on Income Tax) dated April 12, 2017;[3]
d. Details of Discrepancy;[4]
e. Proof of Mailing dated April 12, 2017;[5]
f. General Information Sheet;[6]
g. Letter of Authority dated July 11, 2014;[7]
h. Checklist of Requirements;[8]
i. First Notice for Presentation of Records;[9]
j. Second and Final Notice for Presentation of Records dated August 22, 2014;[10]
k. Recommendation for Issuance of Subpoena Duces Tecum;[11]
l. Subpoena Duces Tecum;[12]

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[1] Annexes "A" and "B," CA.
[2] Annex "C," CA.
[3] Annex "D" CA.
[4] Annex "D-1," CA.
[5] Annex "E," CA.
[6] Annex "F," CA.
[7] Annex "G," CA.
[8] Annex "H," CA.
[9] Annex "I," CA.
[10] Annex "J," CA.
[11] Annex "K," CA.
[12] Annex "L," CA.

m. Preliminary Assessment Notice dated March 23, 2017;[13]
n. Details of Discrepancy;[14]
o. Memorandum;[15]
p. Memorandum of Assignment dated November 7, 2017;[16]
q. Preliminary Collection Letter dated September 22, 2017;[17]
r. Final Notice Before Seizure dated October 5, 2017;[18]
s. Warrant of Distraint and/or Levy;[19]
t. Warrants of Garnishment;[20] and
u. Memorandum dated December 21, 2018.[21]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*,[22] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> 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 willful 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)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

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[13] Annex "M," CA.
[14] Annex "M-1," CA.
[15] Annex "N," CA.
[16] Annex "O," CA.
[17] Annex "P," CA.
[18] Annex "Q," CA.
[19] Annex "R," CA.
[20] Annexes "S" to "JJ," CA.
[21] Annex "KK," CA.
[22] G.R. Nos. 48134-37, October 18, 1990.

In the instant case, records show that the FLD and FAN were sent to accused through registered mail on April 12, 2017. However, the records of the case will show that there was no evidence that the FLD and FAN both dated April 12, 201 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, hence, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

Assuming for the sake of argument that accused indeed received the alleged FAN and FLD, the case should still be dismissed on the ground that the Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

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.
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> 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.
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> 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.
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> The term of prescription shall not run when the offender is absent from the Philippines.

In the present case, the Information states that the crime of unlawful and willful failure and refusal to pay taxes was allegedly committed "on or about October 5, 2017 and thereafter". Considering that the subject Information was filed before this Court on December 6, 2022 or more than five (5) years and two (2) months from the alleged date of the commission of the crime, it is clear that the subject

Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause and by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice