REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case. O-962** (NPS Docket No. XVI-INV-18K-01003) For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
-versus-	**Members:**
ONEMEGA BUILDERS CONSTRUCTION CORPORATION, CZARINA L. LAGMAN & MA. CERISSE S. MOLATO, 108-A Road 1, Pag-Asa, Quezon City, -AT LARGE- *Accused.*	**DEL ROSARIO,** *PJ, Chairperson* **MANAHAN, and REYES-FAJARDO** *JJ.* Promulgated: JAN 2 5 2023 ; 1:26 p.m.

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RESOLUTION

On December 1, 2022, an Information was filed against accused **ONEMEGA BUILDERS CONSTRUCTION CORPORATION, CZARINA L. LAGMAN** and **MA. CERISSE S. MOLATO,** as its president and treasurer, respectively indicting them of violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended. The accusatory portion of which states:

> That on or before June 23, 2015, and thereafter, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused **ONEMEGA Builders Construction Corporation**, a domestic corporation and a registered taxpayer of Revenue District Office No. 038-North, Quezon City, with Tax Identification No. 006-958-724, required by law to file value-added tax returns and pay the tax due thereon, and accused **Czarina L. Lagman and Ma. Cerisse S. Molato**, its president and treasurer, respectively, did then and there willfully, unlawfully and feloniously fail and refuse

to pay deficiency value-added tax in the amount of **Php 13,354,202.04** (excluding charges and penalties thereon), for taxable year 2011, despite due assessment, notice and demand, the latest of which was the Final Notice Before Seizure dated June 23, 2015, 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.

CONTRARY TO LAW.

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

1. Resolution dated October 28, 2020 issued by Assistant State Prosecutor Arlie Alilam-Ramos, recommending that Onemega Builders Construction Corporation, Czarina L. Lagman and Ma. Cerisse S. Molato be charged for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended;

2. A letter of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ), dated November 29, 2018, stating the authority and approval for the filing and institution of criminal Complaint against accused Onemega Builders Construction Corporation, Czarina L. Lagman and Ma. Cerisse S. Molato; and

3. Joint Complaint Affidavit (JCA) of Atty. Dayne B. Medina, Rubenstein M. Usman, Charmaine D. Tomas and Mary Grace J. Soriano dated November 29, 2018 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Letter of Authority dated January 24, 2014;[2]
c. First Request for Presentation of Books & Other Accounting Records dated February 7, 2014;[3]
d. Second and Final Request for Presentation of Records dated February 17, 2014;[4]

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1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annexes "D," JCA.

e. Memorandum;[5]
f. Preliminary Assessment Notice dated September 10, 2014;[6]
g. Assessment Notices dated September 29, 2014;[7]
h. Formal Letter of Demand dated September 29, 2014;[8]
i. Memorandum dated October 2, 2014;[9]
j. Preliminary Collection Letter;[10]
k. Final Notice Before Seizure;[11]
l. Registry Receipt No. 8428;[12] and
m. Warrant of Distraint and/or Levy dated September 11, 2015;[13]
n. Warrant of Garnishment dated January 19, 2017;[14]
o. Warrants of Garnishment dated January 17, 2017[15]
p. Warrants of Garnishment dated December 4, 2015;[16] and
q. Demand before Suit dated September 24, 2018.[17]

OUR RULING

This case merits outright dismissal.

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.[18]

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5 Annex "E," JCA.
6 Annexes "F" to "F-1," JCA.
7 Annexes "G" and "G-1," JCA.
8 Annex "G-2," JCA.
9 Annex "G-3", JCA.
10 Annex "H," JCA.
11 Annex "I," JCA.
12 Annex "I-2," JCA.
13 Annex "J," JCA.
14 Annexes "K," JCA.
15 Annexes "K-1" to "K-6," JCA.
16 Annexes "K-7" to "K-10," JCA.
17 Annex "L," JCA.
18 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Jurisprudence[19] 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.

> **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.[20]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the 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.

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. To expound:

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

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

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[21] case, 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.**
>
> ...[22]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[23] 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 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,**

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21 *G.R.* Nos. L-48134-37, October 18, 1990.
22 Boldfacing supplied.
23 G.R. No. 127777, October 1, 1999.

> **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.**
>
> . . .[24]

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 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 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.

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[24] Citations omitted. Boldfacing supplied.

As claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) dated September 29, 2014 covering the taxable year 2011 was served to and personally received by accused on October 1, 2014. There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on November 29, 2014. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on November 29, 2014.

Counting from November 29, 2014, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on November 29, 2019. 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 1, 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, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-962, is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice