16-000256-0027

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-577

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

IGNACIO DE GUIA SANTOS,
Accused.

To:

MR. IGNACIO DE GUIA SANTOS
IDS Employment Services, No. 15 National Highway
Brgy. Dampol 1st, Pulilan, Bulacan

PROSECUTOR GENERAL VICTOR C. SEPULVEDA
SENIOR ASST. STATE PROS. SUSAN F. DACANAY
ASSISTANT STATE PROSECUTOR MARY ANN S. PARONG
Department of Justice
Padre Faura St., Ermita, Manila

ATTY. NAPOLEON P. CAMPOS, JR.
Bureau of Internal Revenue - BIR Revenue Region No. 5
5th Floor, Legal Division, BIR Executive Bldg.
140 Bo. Kalaanan, Brgy. 86, EDSA, Caloocan City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

REGIONAL DIRECTOR
National Bureau of Investigation - Bulacan
Plaridel – Malolos Road, Provincial Capitol-Compound
Malolos City, Bulacan

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Pulilan Police District
Pulilan, Bulacan

GREETINGS:

You are hereby notified by these presents that on **August 5, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 6, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-577** For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended
-versus-	*Members*: **DEL ROSARIO**, *P.J.*, **BACORRO-VILLENA**, *and* **CUI-DAVID,** *JJ.*
IGNACIO DE GUIA SANTOS, Proprietor, IDS Employment Services, 15 National Hi-Way, Dampol 1st, Pulilan, Bulacan (At-Large) *Accused.*	Promulgated: AUG 0 5 2024 2:00PM

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RESOLUTION

In the *Resolution* promulgated on August 4, 2017,[1] the Court found that Alpha Insurance & Surety Co., Inc. failed to comply with the Court's Order dated May 17, 2017, to produce the accused. Thus, the Court's Second Division ordered that the instant case be archived so it may not remain pending indefinitely.

Meanwhile, upon periodic review of archived cases and their factual antecedents, the Court finds that this case should be dismissed on the ground of prescription.

Prescription in criminal cases is a matter of substantive law.[2] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record

[1] The Resolution dated June 11, 2020, was signed by Associate Justices Juanito C. Castañeda, Cielito N. Mindaro-Grulla, and Jean Marie A. Bacorro-Villena, Docket, p. 91.
[2] *Reodica v. Court of Appeals*, G.R. No. 125066, July 8, 1998, 354 SCRA 90-111.

show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.[3]

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

> *SEC. 281. Prescription for Violations of any Provision of this Code.* - **<u>All violations of any provision of this Code shall prescribe after five (5) years</u>**.
>
> Prescription shall begin to run **<u>from the day of the commission of the violation of the law</u>**, and if the same be not known at the time, **<u>from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.</u>**
>
> 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 and underscoring supplied.*]

In this case, accused was charged with violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals* ("*Lim*"),[4] failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the ***<u>final notice</u>*** **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. **<u>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</u>**. 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 and underscoring supplied*]

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[3] *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*, G.R. No. 212920, September 16, 2015, 769 SCRA 861-871.
[4] G.R. Nos. 48134-37, October 18, 1990, 268 PHIL 680-692.

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[5] which states:

> 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. <u>The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.</u>
>
> 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 <u>after the receipt of the final notice and demand by the taxpayer, and he refuses to pay</u>.** [*Emphasis supplied*]

This interpretation was applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines,*[6] where it was ruled that the crime of willful failure to pay tax, "by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

In a *Resolution* dated March 3, 2023, in CTA Crim Case No. O-966,[7] the Court, citing *Lim,* declared the indispensability of actual receipt of final notice and demand, to wit:

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

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[5] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*
[6] G.R. No. 127777, October 1, 1999.
[7] *People of the Philippines v. Iliref Enterprises, Inc., Alfredo V. Pagarigan and Luz N. Pagarigan (Km. 326 Willarey Avenue, Urbano Velasco Extension, Pinagbuhatan, Pasig City).*

Upon reevaluation of the records, nothing in the Assessment Notices indicates when the accused received the notice. Thus, under *Lim*, the accused cannot be charged with the willful failure to pay tax, absent a showing that the accused received the notice.

Be that as it may, even assuming that the date of issuance is likewise the date of service, the FAN would have attained finality *upon the lapse* of thirty (30) days from receipt of said notice in accordance with Section 228 of the NIRC of 1997, as amended.[8]

In the *Complaint-Affidavit*,[9] it was alleged that the Final Assessment Notice (**FAN**) was issued to accused on October 8, 2012; that it was sent via registered mail, and that a certain Aralou Santos received it, purportedly accused's authorized representative, on October 31, 2010.[10] The FAN would have attained finality *upon the lapse* of thirty (30) days from receipt of said notice in accordance with Section 228 of the NIRC of 1997, as amended.[11] Thus, following the allegations of plaintiff, the assessment would have become final on **December 1, 2010**.

In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, *Lim*, as quoted above, is instructive that the filing of the criminal information must fall within the five (5)-year prescriptive period.

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.

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[8] 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 pre-assessment notice shall not be required in the following cases:

... ...

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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final**.

[9] Docket, pp. 17-22.

[10] Joint Complaint-Affidavit, par 5.6.

[11] 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 pre-assessment notice shall not be required in the following cases:

... ...

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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final**.

This Court is aware that the *Lim* case interpreted Section 354 of the 1939 Tax Code.[12] However, such provision was subsequently reproduced in Section 281 of the NIRC of 1997, as amended. We compare:

Section 354 of the 1939 Tax Code	**Section 281 of the NIRC of 1997**
SECTION 354. Prescription for Violations of Any Provisions of this Code. – All violations of any provisions of this Code shall prescribe after five 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.	*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.

Considering that the wording of Section 354 of the 1939 NIRC was adopted and reproduced in Section 281 of the 1997 NIRC, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in *Lim.*[13]

Thus, pursuant to *Lim*, plaintiff had five (5) years counted from December 1, 2010, or until **December 1, 2015**, to file the *Information* before the Court. The *Information* dated April 12, 2016, was filed with this Court only on **June 15, 2016**.

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[12] Commonwealth Act No. 466, June 15, 1939.
[13] *People v. Castillo*, CTA *EB* Crim. Case No. 053 (CTA Crim. Case No. O-663) (Resolution), June 8, 2021.

Clearly, when the present *Information* was filed on **June 15, 2016**, the government's right to institute a criminal action against accused had already prescribed for *more than six (6) months.*

In *People v. Moran,*[14] cited in *Romualdez v. Marcelo,*[15] the Supreme Court discussed:

> ... Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. **The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; ...that from henceforth[,] he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out.** Hence[,] it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute, is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."
>
> Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. Prescription emanates from the liberality of the State. ... Any doubt on this matter must be resolved in favor of the grantee thereof, the accused. [*Emphasis supplied.*]

WHEREFORE, premises considered, CTA Crim Case No. O-577 is **WITHDRAWN** from the archives and accordingly **DISMISSED** on the ground of prescription of the offense charged.

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[14] G.R. No. 17905, January 27, 1923, 44 PHIL 387-437, quoting Wharton on Criminal Pleading & Practice, 9th ed., 1889.
[15] G.R. Nos. 165510-33 (Resolution), July 28, 2006, 529 PHIL 90-119.

The Alias Warrant of Arrest issued against accused **Ignacio De Guia Santos** is **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice