REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-663** **(NPS Docket No. XVI-INV-11F-00233)** For: Violation of Section 255 of Republic Act 8424 (NIRC of 1997, as amended), in relation to Section 253 par. (d) of the same Code
-versus-	
VIRGILIO B. CASTILLO 41 Havana St., BF Homes Parañaque City, **President, PRO HEALTH INTERNATIONAL INC.,** 184 A. Aguirre Avenue, BF Homes, Parañaque City, *Accused.*	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.* Promulgated: FEB 2 1 2018 2:15 p.m.

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R E S O L U T I O N

The accused, **VIRGILIO B. CASTILLO,** President of **Pro Health International Inc.**, is charged in an Information which reads as follows:

> The undersigned State Prosecutor of the Department of Justice, hereby accused **VIRGILIO B. CASTILLO**, President of **PRO Health International Inc. (PHII for brevity)** for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sec. 253 par. (d) of the same Code, committed as follows:
>
> > That on or about February 14, 2007 up to the present, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the forenamed Accused **VIRGILIO B. CASTILLO** being the **President of PHII**, and as such, required by law, rules and regulations to

> pay taxes due from the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Income Tax Deficiency of PHII for taxable year 2003 in the total amount of **Two Million Nine Hundred Forty Six Thousand Six Hundred Ninety Pesos and Twenty Seven Centavos (P2,946,690.27)**, exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives.
>
> CONTRARY TO LAW.

A perusal of the Information shows that the same is valid on its face for having satisfied the requisites under Section 6[1], Rule 110 of the Rules of Court. It is also supported by the prosecutor's resolution, letter-referral from the Commissioner of Internal Revenue for the conduct of preliminary investigation and filing of appropriate information; complaint-affidavit; and other annexes.

However, the Court finds that the criminal action was filed beyond the five-year prescriptive period.

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

> 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.
>
> <u>Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not know at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment</u>.

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[1] Rule 110 Prosecution of Offenses
Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
When an offense is committed by more than one person, all of them shall be included in the complaint or information.

> 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. (*Underscoring supplied)*

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* (*Lim* case),[2] the Supreme Court interpreted the commencement of the prescriptive period under Section 354 of the Tax Code (now, Section 281). The Supreme Court explained:

> ...The Solicitor General stresses that Section 354 speaks not only of the discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and punishment." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1971 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.
>
> xxx xxx xxx
>
> ...As Section 354 stands in the statute book (and to this day 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
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> 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

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

> regardless of its 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 strict construction in favor of the government and limitations in such cases will not be presumed in the absence of clear legislation. (*Underscoring supplied*)

From the foregoing, the Supreme Court considered both the date of discovery and the institution of judicial proceedings for investigation as significant. It then observed that 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 does not exceed five (5) years, the government's right to file an action will not prescribe.

Conversely, it can be concluded from the Supreme Court's statement in the *Lim* case that if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file an action has prescribed.

Applying Section 281 of the NIRC and the pronouncement in the *Lim* case, the instant Information was filed beyond the five-year period.

According to the Prosecutor's Resolution dated January 28, 2017, and the Joint Complaint-Affidavit dated June 23, 2011, the Formal Assessment Notice (FAN), issued on February 14, 2007, was served on the accused on February 15, 2007. For failure to pay the assessed deficiency taxes, the assessment became final and executory on March 17, 2007, or thirty (30) days from February 15, 2007. This date can be considered as the point of "discovery" of the violation. On the other hand, the Joint Complaint-Affidavit of the revenue officers was referred to the DOJ for preliminary investigation on June 23, 2011.

Thus, the date of "discovery" on March 17, 2007 together with the institution of judicial proceedings for preliminary investigation on June 23, 2011 shows that prescription began to run on June 23, 2011. Counting five (5) years from June 23, 2011, the prescriptive period lapsed on June 23, 2016. Unfortunately, the Information was filed with the Court only on February 5, 2018, which exceeds the five-year prescriptive period. *cwn*

WHEREFORE, considering the foregoing, the Information docketed as CTA Crim. Case No. O-663 is **DISMISSED** on the ground of prescription.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice