REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SHELMARK BUILDERS PHILS., INC. and SANTIAGO C. BARANGAN,
No. 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City,
Accused.

CTA Crim. Case. O-1157
(I.S. No. 2006-813)
For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

Members:

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

Promulgated:

JUL 30 2024
11:44 a.m.

x- -x

RESOLUTION

On June 19, 2024, an Information was filed against accused Shelmark Builders Phils., Inc. and Santiago C. Barangan 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 about the 15th day of April, 2004, in Quezon City, and within the jurisdiction of this Honorable Court, accused Shelmark Builders Phils., Inc., a domestic corporation, doing business in Quezon City and Santiago C. Barangan, being its Treasurer and General Manager, did then and there, willfully, unlawfully and feloniously fail to make and file its income tax return, at the time required by law, with the Bureau of Internal Revenue covering taxable year 2003, thereby failing to pay the corresponding taxes thereto amounting to Two Million Three Hundred Ninety-Three Thousand Four Hundred Seventy-Two Pesos (P2,393,472.00), excluding charges and penalties, despite demand, to the damage and prejudice of the Government.

CONTRARY TO LAW.

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

1. Resolution dated September 12, 2022 issued by Assistant State Prosecutor Arlie Alilam-Ramos;

2. Letter dated August 17, 2006 of the then Commissioner of Internal Revenue Jose Mario C. Bunag to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal complaint against accused; and

3. Joint Complaint Affidavit (JCA) of Imogene B. Usison, Gina D. Floreza, and Albino G. Guyala, Jr. dated August 18, 2006 and filed with the DOJ on even date, with the following attachments:

a. Articles of Incorporation of Shelmark Builders Phils., Inc.;[1]
b. Articles of Incorporation and By-Laws;[2]
c. Letter of Authority dated April 20, 2006;[3]
d. Certificate of Corporate Filing/Information;[4]
e. Letter to Mr. Arnel SD. Guballa dated May 16, 2005;[5]
f. Transmittal Slip;[6]
g. Certification dated October 19, 2005;[7]
h. Check Vouchers;[8]
i. Letters to the President of Loyola Grand Villas Homeowners Association, Inc. dated February 12, 2003, 2012, May 2, 2003, August 8, 2004, and September 6, 2005;[9]
j. Shelmark Builders' Summary Per Project/Contract from Loyola Grand Villas Homeowners Association, Inc.;[10] and
k. Deficiency Taxes - 2001, 2003 and 2004.[11]

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1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annex "D," JCA.
5 Annex "E," JCA.
6 Annex "F," JCA.
7 Annex "G," JCA.
8 Annexes "H" to "H-13," JCA.
9 Annexes "I" to "I-3", JCA.
10 Annexes "J," JCA.
11 Annexes "K," JCA.

OUR RULING

This case merits outright dismissal.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. 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.[12]

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.
>
> 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.
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> ....

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.[13]

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12 Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

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

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:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[14] 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.**
>
> ...[15]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[16] 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

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14 G.R. No. L-48134-37, October 18, 1990.

15 Boldfacing supplied.

16 G.R. No. 127777, October 1, 1999.

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, 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.**
>
> ...[17]

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

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[17] Citations omitted. Boldfacing supplied.

> 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 begins to run from the discovery and institution of proceedings for its investigation and shall only be tolled by the filing of an information therefor with this Court.

In this case, plaintiff's witnesses, Imogene B. Usison, Gina D. Floreza, and Albino G. Guyala, Jr., executed and filed a Joint Complaint Affidavit against accused on August 18, 2006 for preliminary investigation.

On January 20, 2018, the DOJ issued a Resolution finding probable cause against accused for violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC), as amended. Consequently, the subject Information charging accused for Section 255, in relation to Sections 253 (d) and 256 of the NIRC, as amended, was issued with even date of January 20, 2018.

However, said Information was filed only on June 19, 2024, or only after more than eighteen (18) years from the filing of the Joint Complaint Affidavit on August 18, 2006, which was way beyond the prescriptive period of five (5) years under Section 281 of the NIRC of 1997, as amended and as interpreted in the *Lim* case.

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-1157, is **DISMISSED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice