20-000411-0014

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-848

PEOPLE OF THE PHILIPPINES ,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

SND99 FOOD CORPORATION
and DANILO P. VITAN, JR.,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROSECUTOR CONSUELO CORAZON M. PAZZUIAGAN
DEPARTMENT OF JUSTICE
Padre Faura St, Ermita, Manila

ATTY. PAULYN ANN A. UMIPIG-LABUCAY
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, Room 516, Roof Deck, Fisher Mall
Fernando Poe Jr., Avenue corner Quezon Avenue
Quezon City

GREETINGS:

You are hereby notified by these presents that on **June 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **J une 28, 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-848**

For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253 and 256 of the same code.

- versus -

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

SND99 FOOD CORPORATION and DANILO P. VITAN, JR.,
Accused.

Promulgated:
JUN 27 2024, 1:25PM

x - x

RESOLUTION

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (of the Resolution dated February 20, 2024)"[1] (**MR**) filed on 01 April 2024, praying for the reversal of the Resolution of 20 February 2024[2] (**assailed Resolution**) which dismissed the instant case due to prescription.

In the MR, plaintiff mainly argues that the institution of the criminal action before the Department of Justice (**DOJ**) for purposes of preliminary investigation effectively tolled the running of the prescriptive period. Citing *People of the Philippines v. Mateo A. Lee, Jr.*[3] (**People v. Lee, Jr.**), plaintiff avers that there is no distinction between cases under the Revised Penal Code (**RPC**) and those covered by special laws with respect to the interruption of period of

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1 Division Docket, pp. 75-78.
2 Id., pp. 67-74.
3 G.R. No. 234618, 16 September 2019.

prescription. Applying the foregoing, when the Complaint-Affidavit[4] against the accused was filed on 10 October 2019 before the fiscal's office (for purposes of preliminary investigation), the same already tolled the running of the prescriptive period. Thus, plaintiff claims that the criminal offense had not yet prescribed.

We resolve.

An examination of the records of the case warrants the dismissal of the MR due to its belated filing.

Pursuant to Section 6[5], Rule 120 in relation to Section 1[6], Rule 121 of the Revised Rules of Criminal Procedure, an aggrieved party shall have fifteen (15) days from notice of the judgment of conviction or final order to file a motion for new trial or reconsideration, otherwise the said judgment or final order (being contested) shall become final and executory.

Here, based on the Notice of Resolution dated 22 February 2024[7], plaintiff, through the Department of Justice (**DOJ**), received the assailed Resolution on 26 February 2024. Counting 15 days therefrom, plaintiff had until **12 March 2024** to file the MR. However, the MR was filed only on 01 April 2024, thus it was filed out of time. Consequently, the Resolution of 20 February 2024 had already attained finality.

Assuming that the MR was filed on time, the same is still unmeritorious.

First, plaintiff's reliance on *People v. Lee, Jr.* is gravely misplaced. The same is not in all fours in the instant case as the former involved a violation of special penal laws and not a violation of tax laws under the National Internal Revenue Code (**NIRC**) of 1997, as amended, such as this case.

Second, as held in the assailed Resolution, We have clearly pointed that prescription of criminal offenses shall only be interrupted when the same is instituted in judicial proceedings –

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[4] Division Docket, pp. 17-23.
[5] SECTION 6. *Promulgation of Judgment.* — [.]
[6] SECTION 1. *New Trial or Reconsideration.* — [.]
[7] Division Docket, p. 66.

> . . .
>
> Relevantly, Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, provides:
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> > . . .
> >
> > **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.
> >
> > The term of prescription shall not run when the offender is absent from the Philippines.
> >
> > . . .
>
> . . .
>
> In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment. The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.[8]
>
> . . .

The above conclusion is in line with the ruling in *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[9] (**Lim**) where the Supreme Court held that the filing of information in court interrupts the running of the prescriptive period. Moreover, both the conclusion and the ruling in *Lim* are consistent with Section 2[10], Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) which expressly provides that the institution of the criminal action shall interrupt the running of the period of prescription.

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[8] Citations omitted, emphasis and underscoring in the original text.

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

[10] SEC. 2. *Institution of Criminal Actions.*

In view of the foregoing, We maintain that the criminal offense has prescribed. To reiterate our findings, accused received the Formal Letter of Demand (**FLD**) on 09 January 2015. Counting 30 days from receipt thereof, accused had until 08 February 2015 to file its protest or question the assessment. As accused failed to file the protest, the FLD became final and unappealable on 09 February 2015. Counting five (5) years therefrom, plaintiff had until 09 February 2020 to file the subject Information. Hence, the right of the government to institute the case against the accused had already prescribed when the Information was filed before this Court only on 24 November 2020.

WHEREFORE, the plaintiff's "Motion for Reconsideration (of the Resolution dated February 20, 2024)" filed on 01 April 2024 is **DENIED** for having been filed out of time. In any event, the same lacks merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice