REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

JCLN GLOBAL PROPERTIES DEVELOPMENT CORP.
(Address: G6 Dakota Residences, Gen. Malvar St. Corner Adriatico Street, Malate, Manila),

JAMES CHRISTOPHER L. NAPOLES
(At-Large / Address: D Lafayette Condo, Libis, Quezon City), and

JO CHRISTINE L. NAPOLES
(At-Large / Address: No. 635 San Isidro Street, Ayala Alabang, Muntinlupa City)
Accused.

CTA CRIM. CASE NO. O-1159

(NPS No. XVI-INV-151-00354)

For: Violation of Section 254 of the 1997 NIRC (Attempt to Evade/Defeat Tax)

Members:

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

Promulgated:

OCT 0 2 2024
4:10 p.m.

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RESOLUTION

On July 3, 2024, an *Information dated December 1, 2016* was filed before this Court, charging accused JCLN Global Properties Development Corp.; its president, James Christopher L. Napoles; and its treasurer, Jo Christine L. Napoles, of violation of Section 254 (Attempt to Evade or Defeat Tax) of the 1997 National Internal Revenue Code (NIRC of 1997), the accusatory portion of which reads as follows:

> That on [or] about the 15th day of April 2009, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused JCLN GLOBAL

> PROPERTIES DEVELOPMENT CORPORATION (JCLN), a domestic corporation duly registered with the Securities and Exchange Commission, not otherwise exempt, is liable for income tax pursuant to Section 23 of the 1997 NIRC, through its president and treasurer, accused JAMES CHRISTOPHER L. NAPOLES AND JO CHRISTINE L. NAPOLES, respectively, did then and there willfully, unlawfully and knowingly, through fraudulent means, attempt to evade or defeat tax when the above-mentioned accused deliberately filed its fraudulent income tax return by intentional substantial under-declaration of income and declaring only the amount of Php1,537,200.00 in its income tax return for taxable year 2008 and failed to declare/disclose therein the amount of Php16,500,000.00 as true income which constitutes more than thirty percent (30%) of its declared income, thus incurring basic deficiency income tax in the amount of Php4,950,000.00, exclusive of interest and penalty charges, knowing fully well that they paid less taxes than that known to them to the damage and prejudice of the government.
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> CONTRARY TO LAW

While the Information appears to be valid on its face for having satisfied the requisites of Section 6, Rule 110 of the Revised Rules of Criminal Procedure[1], a study of the Prosecutor's Resolution dated December 1, 2016, the Joint Complaint-Affidavit dated September 17, 2015, and its supporting documents reveals that the Information should be dismissed on the ground of prescription.

Violations of the NIRC of 1997 prescribe after five (5) years, as provided in Section 281, to wit:

> 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**

[1] Section 6, Rule 110 of the Revised Rules of Criminal Procedure reads as follows:

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 a 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.

> **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. (Emphasis supplied)

A perusal of the Information shows that the accused are charged for violation of Section 254 for its attempt to evade or to defeat tax when it deliberately filed a fraudulent income tax return and when it intentionally underdeclared its income for taxable year 2008. Allegedly, the declared income of the accused was PhP1,537,200.00 but its true income was PhP16,500,000.00, which was more than thirty (30%) of its declared income. Accused thereby incurred deficiency tax in the amount of PhP4,950,000.00, exclusive of interest and penalty charges.

The acts charged being an omission and misrepresentation by the accused, the date of the commission of the violation is unknown until its discovery. Thus, prescription is reckoned from the discovery of the crime and the institution of judicial proceedings for its investigation and punishment.[2]

The Supreme Court, in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[3], ruled on the reckoning point of the period of prescription and its interruption as follows:

> Not only that. **The Solicitor General stresses that Section 354 speaks not only of 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 proceedings." In other words, **<u>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</u>**. It was on September 1, 1969 that the offenses subject of Criminal Case Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for

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[2] Section 281 of the NIRC of 1997, as amended.

[3] *Emilio E. Lim, Sr. v. Court of Appeals*, G.R. Nos. 48134-37, October 18, 1990.

investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

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The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it 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.**

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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 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 a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation. (Emphasis and underscoring supplied)

Based on the foregoing, if the day of commission of the crime is unknown, the five (5) year prescriptive period commences from (i) discovery and (ii) institution of judicial proceedings or when the offense is endorsed to the Prosecutor's Office for preliminary investigation. The period of prescription is interrupted upon filing of the information before the proper court, which is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals, 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.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Emphasis supplied)

In the present case, the Bureau of Internal Revenue (BIR) filed on September 17, 2015 with the National Prosecution Service of the Department of Justice its Joint Complaint Affidavit and the endorsement of the then Commissioner of Internal Revenue.

The Information charging the accused of violation of Section 254 of the NIRC of 1997, as amended, was filed before this Court on July 3, 2024 or more than six (6) years from the time of the discovery of the crime and its endorsement for preliminary investigation. Clearly, the right to prosecute this criminal action has prescribed.

Prescription is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law.[4] Consequently, prescription is a mode that totally extinguishes the criminal liability of the accused.

WHEREFORE, in view of the foregoing, the Court finds no probable cause to issue a warrant of arrest on the ground of prescription of the offense charged. On the same ground, the instant Information dated December 1, 2016, docketed as CTA Criminal Case No. O-1159, is **DISMISSED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[4] *People v. Mateo A. Lee, Jr.*, G.R. No. 234618, September 16, 2019.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice