REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

EVANGELINE M. SERTESA,
(F. Salvador, Jordan Plains Subd., Sta Monica, Novaliches, Quezon City),
Accused.

CTA Crim. Case No. O-753
(NPS Docket No. XVI-INV-14H-00259)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

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

Promulgated:
AUG 29 2024
1:06 p.m.

x- x

RESOLUTION

On July 16, 2019, an Information was filed against accused Evangeline M. Sertesa for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, or the crime of Willful Failure to Pay Income Tax for taxable year (TY) 2007.

For easy reference, the accusatory portion of the Information reads:

> "That on or about June 22, 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused EVANGELINE M. SERTESA, doing business under the name E.M.S. Enterprises, a sole proprietorship with registered address at F. Salvador, Jordan Plains Subd., Sta. Monica, Novaliches, Quezon City, required by law to file Income Tax Return (ITR) and to pay corresponding income tax, did then and there, knowingly, consciously and willfully fail to pay deficiency income tax in the amount of Fourteen Million Seven Hundred Seventy Six Thousand One Hundred Seventy Two Pesos and Nineteen Centavos (Php14,776,172.19), exclusive of interests, surcharges and penalties, for taxable year 2007, despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) issued after tax investigation, including prior and post-notices, and final

demands to pay, the last being in the nature of demand before suit issued on June 22, 2012 and her failure to file any protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines.

Contrary to Law"[1]

Meanwhile, the following documents were attached to subject Information:

1. Resolution dated April 1, 2018 issued by Assistant State Prosecutor John R. Resado, recommending the filing of Information against the accused for violation of Section 255 of the 1997 NIRC, as amended, for the crime of willful failure to pay deficiency income tax and value added tax, all for TY 2007;

2. Investigation Data Form;

3. Referral Letter dated August 28, 2014 for preliminary investigation and filing of information against accused, issued by Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares; and

4. Joint Complaint-Affidavit of Revenue Officers (ROs) Dayne B. Medina, Cristeta SP Banihit, and Jennifer P. Enriquez, executed on August 28, 2014, with the supporting documents including the Preliminary Assessment Notice (PAN)[2] and Final Assessment Notice (FAN).[3]

On August 6, 2019, the Court directed the issuance of the Warrant of Arrest (WOA) against the accused.[4]

On August 13, 2019, the WOA was issued.[5]

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[1] Docket, CTA Crim. Case No. O-753, Information, pp. 8-9.
[2] *Id.*, p. 37.
[3] *Id.*, p. 38.
[4] *Id.*, Resolution dated August 6, 2019, pp. 52-57.
[5] *Id.*, pp. 58-59.

On September 5, 2019,[6] the WOA was returned but not served because subject accused cannot be located in the indicated address or the whereabouts are unknown.

On July 22, 2020, the Chief of Philippine National Police (PNP) and the Director of National Bureau of Investigation (NBI) have yet to make a report even after more than six months after the issuance of WOA. Thus, the Court archived the instant case on even date.[7]

On September 3, 2020, the PNP made a return of the WOA stating therein that the accused is no longer residing in the given address.[8]

During the pendency of the instant case, this Court revisited and reviewed the records of the case and found that at the time of the filing of the said Information, the case had already prescribed.

Section 281 of the 1997 NIRC, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> "**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. ...."

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.[9]

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[6] *Id.*, Memorandum dated September 5, 2019, p. 62.
[7] Docket, Resolution dated July 22, 2020, pp. 70-71.
[8] *Id.*, Officer's Return of Warrant of Arrest dated September 3, 2020, p. 93.
[9] *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 1997 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 the 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.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals* [10], accused therein were charged for their refusal to pay deficiency income tax (IT) due for TYs 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**..." (*Boldfacing supplied*)

Then came the *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*[11] 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 already 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

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[10] G.R. Nos. L-48134-37, October 18, 1990.
[11] G.R. No. 127777, October 1, 1999.

> 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. ...**"

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 1997 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 Department of Justice (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 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 shall be tolled by the filing of an Information with this Court.

In the instant Information, accused is being charged for failure to pay its IT Deficiency for TY 2007 in the amount of Php14,776,172.19, exclusive of charges and penalties.

Likewise, it was also alleged by the Complainants that the Formal Letter of Demand was served through registered mail and failed to make a timely protest. The assessment became final, executory, and demandable.[12] Thus, a Preliminary Collection Letter (PCL) was issued on February 1, 2012.[13]

Based on the records of the case, the certified true copies of FAN and the attached Assessment Notice for IT[14] have no due dates indicated therein. The apparent reckoning point where the subject assessment became delinquent was on the issuance of the PCL on February 1, 2012.

Thus, said assessment attained finality on February 1, 2012. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on February 1, 2012.

Counting from February 1, 2012, the five (5)-year prescriptive period to indict accused for failure to pay income tax lapsed on February 1, 2017. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on July 16, 2019.

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.

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[12] Docket, Paragraphs 10 and 11 of Joint Complaint-Affidavit, p. 28.
[13] *Id.*, Paragraph 12 of Joint Complaint-Affidavit, p. 28.
[14] *Id.*, p. 39.

ACCORDINGLY, CTA Crim. Case No. O-753 is **DISMISSED** on the ground of prescription.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(on official business)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice