REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **JUANCHITO D. BERNARDO, PRAXEDES P. BERNARDO and JDBEC, INCORPORATED**, located at JDBEC Incorporated, Room 511 DFS Building, Remedios Street, corner Taft Avenue, Malate, Manila and 8F PARC House II, No. 21 EDSA Guadalupe Nuevo, Makati City (At Large), Accused.	**CTA CRIM. CASE NO. O-735** For Failure to Supply Correct and Accurate Information under Section 255 of the National Internal Revenue Code, as amended, in relation to Sections 253 (d) and 256 of the same code Members: **DEL ROSARIO**, *PJ, Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* Promulgated: DEC 10 2019 1:05 pm

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RESOLUTION

For resolution are the following:

1. the prosecution's **Motion for Reconsideration with Submission (of Resolutions dated August 22, 2019 and September 6, 2019)**, filed on September 23, 2019, without accused's comment despite notice as per Records Verification dated November 14, 2019;

2. the prosecution's **Motion for Reconsideration Ad Cautelam (of Resolution dated September 17, 2019)**, filed on October 8, 2019, with accused's **Manifestation and Comment/Opposition (Re: Plaintiff's Motion for Reconsideration Ad Cautelam)**, filed on November 13, 2019; and

3. the accused's **Motion to Admit the Comment/Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)**, filed on November 22, 2019.

I.

The Court, at the outset, shall discuss accused's Motion to Admit. In said motion, accused explained that their counsel overlooked that the prosecution filed a Motion for Reconsideration with submission in the consolidated CTA Criminal Case Nos. O-729 and O-735. Their counsel filed a Comment in CTA Criminal Case No. O-729 and mistakenly thought that it was for both cases. Thus, accused beg for the kind understanding of the Court to admit the attached Comment/Opposition to prosecution's Motion for Reconsideration with Submission. They contend that the failure to submit Comment in this case was due to an honest mistake and not intended to delay the proceedings of this case.

After careful consideration of accused's **Motion to Admit the Comment/Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)**, the Court finds basis sufficient to grant the same. Accordingly, the Court shall admit accused's **Comment/Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)**.

II.

The prosecution moves for reconsideration of the Resolution dated August 22, 2019 which dismissed the case in view of the prosecution's failure to comply with the Court's Resolution dated July 10, 2019.

In the Resolution dated July 10, 2019, the Court directed the prosecution to submit the original or certified true copies of the: (1) DOJ Resolution dated July 31, 2015; (ii) DOJ Resolution dated June 20, 2013; (iii) Joint Complaint-Affidavits dated September 23, 2010; (iv) Supplemental Joint Complaint-Affidavits dated December 22, 2010, January 12, 2011, and February 2, 2011; (vi) Referral Letter dated September 23, 2010 duly signed by the CIR, within five (5) days from notice.

The prosecution states that the case was originally assigned to Senior State Prosecutor Merba A. Waga and when she recently retired, this case, along with six (6) others, was reassigned to Senior Assistant State Prosecutor Charlie L. Guhit and Associate Prosecution Attorney Eugene Yusi. Considering the voluminous records, which have to be individually inventoried, organized and transferred, and the need to read and study each case simultaneously with other workloads and commitments, the prosecution unintentionally was not able to submit the documents enumerated in the Resolution dated July 10, 2019.

Furthermore, the prosecution alleges that it had to coordinate with the deputized special prosecutor from the Bureau of Internal Revenue who in turn had to communicate with the Revenue Officers who conducted the audit examination against the accused, for the proper certification of the audit documents. It admits that it was difficult to trace back each of the documents considering that the case was filed before the Department of Justice (DOJ) in the year 2010 and it involved the audit examination of four (4) taxable years.

Hence, the prosecution begs the understanding of this Court in considering its excusable negligence that resulted in the dismissal of this case.

Accused, in their Comment/Opposition, aver that the prosecution has been deliberately and intentionally delaying this case. They contend that the history of the instant case shows a pattern of intentional delay that violates their basic Constitutional right to speedy disposition of their case. Accused allege that it took the DOJ nine (9) years to finish the preliminary investigation and the filing of the criminal information with this Court. They aver that when the criminal information was filed, the prosecution intentionally failed to submit the required documents.

Moreover, accused claim that the explanations of the prosecution for its failure to comply with the Resolution dated July 15, 2019 are very shallow excuses. They allege that the documents of the case are all intact. If there was mishandling of the records, accused aver that it is not the fault of the accused and the same should not be used to ignore the Resolution dated July 15, 2019.

Accused further claim that there was a clear gross negligence on the part of the prosecution and to grant its motion is too much as it would totally disregard the right of the accused for the speedy disposition of their case.

Lastly, accused argue that the case should be dismissed on the ground of prescription as the Information was filed more than five (5) years from the discovery thereof. They allege that the NIRC of 1997, as amended, the Manual for Prosecutors and the Rules of Procedure of the CTA provide that it is the actual filing in court that tolls the running of the prescriptive period.

III.

In the Motion for Reconsideration Ad Cautelam, the prosecution seeks reconsideration of the Resolution dated September 17, 2019 in which the Court noted without action its Entry of Appearance and Motion for Consolidation with Motion to Defer Proceedings in view of the issuance of the Resolution dated August 22, 2019.

According to the prosecution, CTA Criminal Case Nos. O-728, O-729, O-730, O-731, O-732, O-733, O-734, and O-735, all entitled "*People of the Philippines vs. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC Incorporated*", which it sought to be consolidated, similarly charge the accused with Failure to Supply Correct and Accurate Information, punishable under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253(d) and 256 thereof. It alleges that these cases are founded on the same facts, involve the same parties, arose from a single preliminary investigation, and are inextricably related or connected with one another.

Thus, the prosecution seeks reconsideration of the Resolution dated September 17, 2019 and reiterates the Entry of Appearance and a Motion for Consolidation with Motion to Defer Proceedings in the event that a favorable resolution is given on its Motion for Reconsideration of the Resolution dated August 22, 2019.

Accused, in their Manifestation and Comment/Opposition (Re: Plaintiff's Motion for Reconsideration Ad Cautelam), reiterate their arguments that the history of the case shows a pattern of intentional delay that violates their basic Constitutional right to speedy disposition of their case and that when the criminal information was filed, the prosecution intentionally failed to submit the required documents.

Moreover, accused claim that the motion for reconsideration *ad cautelam* is a mere scrap of paper and devoid of any legal significance because the case has long been dismissed in the Resolution dated August 22, 2019.

Accused reiterates that the mishandling of record is not the fault of the accused and should not be used as an alibi in order for the prosecution to ignore the Resolution dated August 22, 2019. They contend that there was a clear gross negligence on the part of the prosecution not to comply with the Resolution dated August 22, 2019.

RULING

The prosecution's Motion for Reconsideration and Motion for Reconsideration Ad Cautelam are bereft of merit.

In *Ireneo M. Santos vs. Manuel S. Rustia*[1], the Supreme Court explains what constitute excusable negligence and its nature, to wit:

> Corpus Juris, Vol. 45, section 852 has to say the following, applicable a *fortiori* to excusable negligence:
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> > Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact, of standards of care and compliance therewith, involving the preliminary question as to whether defendant owed any duty of care to plaintiff, and leaving it for the jury to decide the ultimate facts of negligence, subject to the exceptions hereinafter stated. Where the standard of care is fixed and the measure of duty is defined by the law and is the same under all circumstances, and where compliance therewith is proved or disproved by uncontradicted evidence or undisputed facts from which only one inference can reasonably be made, the court may declare defendant to be guilty or not guilty of negligence as matter of law. Cases, where the standard of care is fixed, go to the jury only where the evidence of compliance rests on contradictory evidence or upon disputed facts. But where the standard of duty is not fixed, but variable, shifting with the circumstances, as is generally the case, it is for the jury to determine, under instructions, what the standard of care required in a particular case is, and whether there has been a compliance with such requirements.

Moreover in *Lui Enterprises, Inc. vs. Zuellig Pharma Corporation and the Philippine Bank of Communications*[2], the Supreme Court held that excusable negligence is "one which ordinary diligence and prudence could not have guarded against."

As discussed in the abovementioned cases, the negligence will only be excusable if, even with the observance of the standard of due diligence of a good father of a family, the non-compliance of the Resolution dated July 10, 2019 cannot be avoided.

In this case, the inadvertence of the prosecution in complying with the order of the Court in the Resolution dated July 10, 2019 cannot be considered as excusable negligence. It fell short of the standard of due diligence and care that lawyers are required in handling their

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[1] G.R. No. L-4917-R, October 31, 1951.
[2] G.R. No. 193494, March 7, 2014.

cases. The prosecution must be aware of its responsibility to account for each and every case and the orders of the court on each case. Needless to say, the prosecution must bear the resulting consequence due to its own negligence.

Furthermore, even if the Court consider the prosecution's inadvertence in complying with the order of the Court in the Resolution dated July 10, 2019 as excusable negligence, the case should still be dismissed on the ground of prescription.

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

> "**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.
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> 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."

Based on the foregoing provision, the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3], the Supreme Court interpreted the commencement of the prescriptive period under Section 354 of the Tax Code (now Section 281 of the NIRC of 1997, as amended). The Supreme Court ruled as follows:

> xxx. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings.

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

> 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, 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 1791 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.
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> xxx xxx xxx
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> 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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> 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 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. (*Underscoring supplied*)

In this case, the records show that on September 23, 2010, the BIR referred the Joint Complaint-Affidavits of ROs Arnel B. Magbag, Jose Amor B. Dayoan, Ma. Racel B. Wacan, and Amelita M. Tugade with the DOJ for preliminary investigation. As admitted by the prosecution in their Motion for Reconsideration with Submission (of Resolutions dated August 22, 2019 and September 6, 2019), **the case was filed before the DOJ in the year 2010 or nine (9) years ago**. Counting five (5) years from 2010, the five (5)-year prescriptive period lapsed in 2015. The right of the government to institute the case against accused had already prescribed when the **Information was filed on June 18, 2019**, thus further justifying the dismissal of the present case. Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[4] Evidently, in this case, prescription has automatically set in when the prosecution failed to file the Information within the five (5)-year prescriptive period.

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[4] *Rafael Yapdiangco vs. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, June 24, 1983.

Considering that this case is dismissed, the prosecution's request that the Court consolidate this case with CTA Criminal Case No. O-728, raffled before the Second Division of this Court, is considered moot.

WHEREFORE, premises considered, accused's **Motion to Admit the Comment/Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)** is **GRANTED** and the **Comment/Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)** is **ADMITTED.** The prosecution's **Motion for Reconsideration with Submission (of Resolutions dated August 22, 2019 and September 6, 2019)** and **Motion for Reconsideration Ad Cautelam (of Resolution dated September 17, 2019)** are **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice