REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-826** (NPS Docket No. XVI-INV-18K-00995) For Violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended.
- *versus* -	
ASIAN FUELS INC., ALFRED JOSEPH S. ARANETA and ANTHONY JAMES S. ARANETA, (Bay 1, DBP Avenue, FTI Complex, Taguig City/152 Lauan St., Ayala Alabang Village, Muntinlupa City), *Accused.*	Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.* Promulgated: JUL 31 2024 4:06 p.m.

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RESOLUTION

Accused Asian Fuels Inc. (AFI), its treasurer, Alfred Joseph S. Araneta, and president, Anthony James S. Araneta, are charged for violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997 (NIRC), as amended, in the Information filed on March 4, 2020, and Amended Information dated July 28, 2020, as quoted hereunder:

> The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses Asian Fuel Inc. and its officers namely Alfred Joseph S. Araneta and Anthony James S. Araneta, in their capacity as Treasurer and President of ASIAN FUELS, INC., respectively, of violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:
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> > "That on or about May 28, 2013 and thereafter, in Makati[,] City and within the jurisdiction of this Honorable Court, Asian Fuels Inc., a registered taxpayer engaged in the

retail business of liquified petroleum gas and other fuel products, with obligation under the law to pay its correct Value Added Tax for taxable yea 2008, through its Treasurer, Alfred Joseph S. Araneta and President, Anthony James S. Araneta, did then and there, willfully, unlawfully, and feloniously fail to pay the correct Value-Added Tax with the Bureau of Internal Revenue for taxable year 2008 in the amount of Eleven Million Nine Hundred Eight Thousand Two Hundred Twenty Seven and 92/100 pesos only (Php11,908,227.92), exclusive of surcharges and interest, despite service of notices and demand letters for them to pay the said tax, to the damage and prejudice of the Government.

CONTRARY TO LAW."

In a *Resolution* dated October 7, 2020[1], the Court found probable cause to hold accused for trial and ordered the issuance of Warrants of Arrest against the accused.

On February 5, 2021, the Court issued a *Resolution*[2] noting the Returns of the Warrants of Arrest rendered by PEMS Vanessa C. Marabi, Officer-in-Charge, Warrant and Subpoena Section of the Taguig City Police Station submitted on February 1, 2021, stating that the subjects of the Warrants of Arrest cannot be located in the given address. In the same *Resolution*, the Court ordered the issuance of Alias Warrants of Arrest against all accused. Subsequently, on February 9, 2021, Alias Warrants of Arrest[3] were issued against all accused.

However, considering that all accused remained at-large, the Court resolved to archive the instant case through its *Resolution* dated June 22, 2022[4], as quoted hereunder:

> Records show that to date, accused ALFRED JOSEPH S. ARANETA and ANTHONY JAMES S. ARANETA remain at-large, and in order that this case will not remain pending in the Court's docket for an indefinite period of time, let the case against accused ALFRED JOSEPH S. ARANETA and ANTHONY JAMES S. ARANETA be **ARCHIVED,** without prejudice to its revival upon the arrest of the accused.
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> Let a copy of this Resolution be furnished the Commissioner of Internal Revenue who is directed to exert diligent efforts to ascertain the whereabouts of the accused for his early apprehension. The Public Prosecutor is hereby ordered to coordinate with the Commissioner of Internal Revenue in this regard.

[1] Division Docket, pp. 64 to 66.
[2] Division Docket, pp. 74 to 75.
[3] Division Docket, pp. 76 to 79.
[4] Division Docket, p. 81.

SO ORDERED.

Meanwhile, the number of criminal cases archived due to the authorities' failure to cause the arrest of the accused, as well as the successive dismissal of recent cases on the ground of prescription, prompted this Court to review the archived cases to determine whether they were filed within the prescriptive period provided under Section 281 of the NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

Section 281 of the 1997 NIRC, as amended, states the prescription for violations of any provision of the NIRC, *viz.*:

> 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 date 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 offended is absent from the Philippines. (*Emphasis Supplied*)

Based on the above-cited provision, all violations of any provision of the NIRC shall prescribe after five (5) years from the date of the commission of the violation of the law, or if the same be unknown, at the time of discovery thereof.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> 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 action 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.

> **The institution of the criminal action shall interrupt the running of the period of prescription.** (*Emphasis Supplied*)

The offense charged in the subject Amended Information involves the accused's alleged willful failure to pay deficiency income tax and value-added tax (VAT). Based on jurisprudence,[5] the crime of willful failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

A careful reading of the Prosecutor's Resolution[6] shows that on November 16, 2012, a Formal Assessment Notice (FAN) with Details of Discrepancies[7] was issued by then Regional Director Nestor S. Valeroso. Thereafter, on February 13, 2013, a Preliminary Collection Letter (PCL)[8] was issued and served via registered mail to AFI. In relation thereto, in the Joint-Complaint Affidavit[9], it was alleged that the FAN was constructively served to AFI on November 21, 2012, and that the assessment issued became final, executory, unappealable and demandable due to its failure to file a protest within the thirty (30)-day reglementary period as provided in Section 228 of the NIRC.

As gleaned from the foregoing, it can already be inferred that the subject Information was filed beyond the five (5)-year prescriptive period.

While there was an allegation of constructive service of the FAN on November 21, 2012, the Court noted that there was no attestation by the two (2) witnesses and written report on the matter by the revenue officer who constructively served the FAN, attached to the Information. Hence, the Court cannot ascertain whether the constructive service complied with the requirements provided under Revenue Regulations No. 12-99.

Nevertheless, an examination of the Assessment Notices[10] attached to the FAN reveals that the accused was allotted a period of thirty (30) days from November 16, 2012, or until December 17, 2012, within which to pay the deficiency taxes. Considering that the accused failed to pay the deficiency taxes on or before the due date, the offense

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[5] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines,* G.R. No. L-48134-37, 18 October 1990 and *Petronilla C. Tupaz v. Honorable Benedicto B. Ulep, et al.,* G.R. No. 127777, 1 October 1999.
[6] Resolution dated July 5, 2019, Division Docket, pp. 8 to 15.
[7] Annex "F", Joint-Complaint Affidavit dated November 29, 2018, Division Docket, pp. 33 to 37.
[8] Annex "G", Joint-Complaint Affidavit dated November 29, 2018, Division Docket, p. 40.
[9] Par. 9, Joint Complaint-Affidavit dated November 29, 2018, Division Docket, p. 21.
[10] Annexes "F-2" and "F-3", Joint-Complaint Affidavit dated November 29, 2018, Division Docket, pp. 38 to 39.

of failure to pay tax under Section 255 of the NIRC was committed on December 18, 2012, after the allotted period given. Thus, the plaintiff had five (5) years from December 18, 2012 or until **December 18, 2017**, within which to institute the criminal action before the Court. Unfortunately, the Information for the instant case was filed only on March 4, 2020.

It is also worthy to note that the Joint-Complaint Affidavit[11] of the revenue officers of the Bureau of Internal Revenue, Investigation Data Form of the National Prosecution Service[12], and the Referral Letter of the Commissioner of Internal Revenue[13], all reflect that they were executed on November 29, 2018. Clearly, these were all made after the lapse of the five (5)- year prescriptive period on December 17, 2017.

In light of the foregoing, the Court finds that the Information subject of the instant case should be dismissed for being filed beyond the five (5)-year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-826 is hereby **WITHDRAWN** from the archives. Moreover, the instant Information is hereby **DISMISSED** due to prescription of the offense charged. Let the Warrants of Arrest issued against accused be **RECALLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(On leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

[11] Division Docket, pp. 19 to 23.
[12] Division Docket, p. 16.
[13] Division Docket, pp. 17 to 18.