REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

LOCALS APPAREL VENTURES STORES, INC.
Level 3, Robinsons Galleria
No. 118 corner Ortigas Avenue
Quezon City

YU-ERIC S. YU
-do-

RANDY T. ANG,
-do-

(All at-large)

Accused.

CTA Crim. Case Nos. O-1104 and 1105
(NPS Docket No. XVI-INV-19E-00165)

For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

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

Promulgated:

NOV 30 2023
1:20 p.m.

x- -x

RESOLUTION

On October 4, 2023, an Information was filed against accused **LOCALS APPAREL VENTURES STORES, INC., YU-ERIC S. YU,** and **RANDY T. ANG,** as its president and treasurer, respectively indicting them of violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997 (NIRC), as amended, for failure to pay value-added tax deficiencies for taxable year 2009. The accusatory portion of which states:

> That on or about November 6, 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused Locals Apparel Ventures Stores, Inc., a domestic corporation registered with the Securities and Exchange Commission and at BIR RDO No. 40, Cubao, Quezon City, with

> Tax Identification No. 231-990-540, and its president and treasurer, accused Yu-Eric S. Yu and Randy T. Ang, respectively, in conspiracy with one another, did then and there, willfully, unlawfully and feloniously fail to pay the basic value-added tax deficiencies for taxable year 2009 in the amount of Two Million Four Hundred Sixty Two Thousand Seven Hundred Ninety Eight Pesos and Forty Six Centavos (**Php2,462,798.46**), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Final Notice Before Issuance of Warrant of Distraint and Levy issued on November 6, 2013, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**

On the same date, an Information was filed against the same accused indicting them of violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended, for failure to pay income tax deficiencies for taxable year 2009. The accusatory portion of which states:

> That on or about November 6, 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused Locals Apparel Ventures Stores, Inc., a domestic corporation registered with the Securities and Exchange Commission and at BIR RDO No. 40, Cubao, Quezon City, with Tax Identification No. 231-990-540, and its president and treasurer, accused Yu-Eric S. Yu and Randy T. Ang, respectively, in conspiracy with one another, did then and there, willfully, unlawfully and feloniously fail to pay the basic income tax deficiencies for taxable year 2009 in the amount of One Million Nine Hundred Forty Five Pesos and Fifty Two Centavos (**Php1,000,945.52**), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Final Notice Before Issuance of Warrant of Distraint and Levy issued on November 6, 2013, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated September 6, 2019 issued by Assistant State Prosecutor Mary Ann S. Parong, recommending that Locals Apparel Ventures Stores, Inc., Yu-Eric S. Yu, and Randy T. Ang be charged for

violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended;

2. A letter of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ), dated May 2, 2019, stating the authority and approval for the filing and institution of criminal Complaint against accused Locals Apparel Ventures Stores, Inc., Yu-Eric S. Yu and Randy T. Ang; and

3. Joint Complaint Affidavit (JCA) of Atty. Alvin N. Sto. Domingo, Rex D. Escala, Raul A. Celso and Loida E. Taguiam dated May 2, 2019 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Letter of Authority dated September 21, 2010;[2]
c. First Request for Presentation of Records;[3]
d. Second Request for Presentation of Records dated July 27, 2010;[4]
e. Final Notice dated August 24, 2010;[5]
f. Recommendation for Issuance of Subpoena Duces Tecum dated September 2, 2010;[6]
g. Subpoena Duces Tecum dated September 15, 2010;[7]
h. Memorandum;[8]
i. Memorandum dated April 30, 2012;[9]
j. Amended Post Reporting Notice dated May 28, 2012;[10]
k. Revenue Officer's Audit Report on Income Tax dated September 21, 2010;[11]
l. Revenue Officer's Audit Report on Value Added Tax dated September 21, 2010;[12]
m. Revenue Officer's Audit Report Expanded Withholding Tax dated September 21, 2010;[13]
n. Revenue Officer's Audit Report on Documentary Stamp Tax dated September 21, 2010;[14]

---

1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annexes "D," JCA.
5 Annex "E," JCA.
6 Annex "F," JCA.
7 Annex "G," JCA.
8 Annex "H," JCA.
9 Annex "I," JCA.
10 Annex "J" JCA.
11 Annex "K," JCA.
12 Annex "K-1," JCA.
13 Annex "K-2," JCA.
14 Annex "K-3," JCA.

o. Preliminary Assessment Notice dated September 20, 2012;[15]
p. Formal Letter of Demand dated October 16, 2012;[16]
q. Assessment Notices dated October 16, 2012;[17]
r. Preliminary Collection Notice dated February 14, 2013;[18]
s. Final Notice Before Issuance of Warrant of Distraint and Levy dated November 6, 2013;[19]
t. Warrant of Distraint and/or Levy dated February 17, 2014;[20] and
u. Warrants of Garnishment.[21]

OUR RULING

Considering that CTA Crim. Case Nos. 1104 and 1105 both involve the same parties and the alleged offenses arose from the result of the same tax investigation, Joint Complaint Affidavit, Referral Letter and Resolution from the Department of Justice, CTA Crim. Case No. 1105 is consolidated with CTA Crim. Case No. 1104.

However, these cases merit outright dismissal.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[22]

---

15 Annex "L," JCA.
16 Annex "M" JCA.
17 Annexes "M-1" to "M-5," JCA.
18 Annex "N" JCA.
19 Annex "O," JCA.
20 Annex "P" JCA.
21 Annexes "Q" to "Q-11," JCA
22 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Jurisprudence[23] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

> **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.[24]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the 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 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. To expound:

---

23 *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

24 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[25] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 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.**
>
> ...[26]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[27] 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 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 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,**

---

25 *G.R.* Nos. L-48134-37, October 18, 1990.

26 Boldfacing supplied.

27 G.R. No. 127777, October 1, 1999.

> **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.**
>
> . . .[28]

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 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 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.

---

[28] Citations omitted. Boldfacing supplied.

As claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) dated October 16, 2012 covering the taxable year 2009 was served to and personally received by accused on October 19, 2012. There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on November 19, 2012. *Sans* payment thereof by accused, the tax offenses, in these cases, were *committed* on November 19, 2012.

Counting from November 19, 2012, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on November 19, 2017. Thus, the right of the government to institute the cases against accused had already prescribed when the Information was filed before this Court on October 4, 2023.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present cases dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offenses charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-1104 and CTA Crim. Case No. 1105, are **DISMISSED.**

SO ORDERED.

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

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

HENRY S. ANGELES
Associate Justice