REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**CTA Crim. Case No. O-711** (NPS Doc No. XVI-INV-17I-00235) For: Violation of Section 255 of the NIRC of 1997, as amended.
- versus -	Members: **MANAHAN**, *Chairperson*, **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
CONDI WILLIAM INDUSTRIAL CO./ DANIEL Y. CHUA, 234 Sumulong Highway, Mambungan 1870 Antipolo City, *Accused.*	Promulgated: SEP 20 2024 1:02 p.m.

x- x

RESOLUTION

On March 18, 2019, an Information was filed against accused Daniel Y. Chua. Said accused was charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

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

> "That on or about January 14, 2013 or on dates subsequent thereto, in Antipolo City, and within the jurisdiction of this Honorable Court, the above-named accused, as the General Manager of Condi William Industrial Co., which is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 007-304-398, and with registered business address at 234 Sumulong Highway, Mambungan, Antipolo City, did then and there, willfully, unlawfully, and criminally fail and neglect to pay deficiency income tax amounting to Php24,313,223.06 (or for total amount of Php38,115,140.37 inclusive of interest and surcharges) covering taxable year 2009, which he continually refused to pay despite final assessment, including post and prior notices and formal demands to pay, the latest being in the nature of demand before suit issued by the BIR on August

23, 2017 resulting in the deprivation of revenues due the Government.

CONTRARY TO LAW."

Meanwhile, the following documents were attached to subject Information:

1. Resolution dated February 21, 2018 issued by Assistant State Prosecutor Zenamar J. L. Machacon-Caparros, recommending the filing of Informations 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, value added tax, and final withholding tax for taxable year (TY) 2009;

2. Referral Letter dated September 4, 2017 for preliminary investigation and filing of information against accused Paw, issued by Commissioner of Internal Revenue (CIR) Caesar R. Dulay; and

3. Joint Complaint-Affidavit of Revenue Officers (ROs) Arlyn T. Corro, Milagros Leni Q. Flores and Michael R. Nitafan, executed on September 14, 2017, with supporting documents.

On April 12, 2019, the Court issued a Resolution for the issuance of Warrant of Arrest (WOA). On May 8, 2019, the WOA was issued. However, on July 23, 2019, a Return of WOA was posted informing this Court that said WOA was unserved.

Thus, the Court issued an Alias WOA on August 23, 2019.

Again, said Alias WOA has yet to be served to the accused. Based on the records of this case, the warrant was not served to the accused because the latter cannot be located on its registered business address, hence, his whereabouts is unknown.

On March 11, 2020, the case was archived because the Alias WOA was not served and the accused is still at-large.

Upon a second and careful evaluation of the Information issued to the accused, it appears that the Court has no jurisdiction over the case.

Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. xxx xxx xxx:
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:
>
> 1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties**, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized...." (*Emphasis supplied*)

In order for this Court to acquire jurisdiction over the criminal case, the requisites, among others, is that the principal amount of taxes and fees must be exclusive of charges and penalties.

However, as shown in the accusatory portion of such Information, the amount of deficiency income tax is inclusive of interest and surcharges and that the phrase "exclusive of charges and penalties" is not indicated therein. Hence, the defect in such Information affects the Court's jurisdiction over the instant case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**.[1]

ACCORDINGLY, CTA Crim. Case No. O-711 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With Separate Concurring Opinion)
HENRY S. ANGELES
Associate Justice

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[1] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015; *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 04, 2015.

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PEOPLE OF THE PHILIPPINES,
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- *versus* -

CONDI WILLIAM INDUSTRIAL CO./DANIEL Y. CHUA
234 Sumulong Highway,
Mambungan 1870 Antipolo City,
Accused.

CTA Crim. Case No. O-711

Members:

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

Promulgated:
SEP 20 2024
1:02 p.m.

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SEPARATE CONCURRING OPINION

ANGELES, *J.*:

I agree with the Resolution to **dismiss** to the above-captioned case, but not for the reasons stated therein. With due respect to the *ponente*, I would like to discuss further the ground upon which the dismissal should be anchored in my humble opinion.

The case should be dismissed due to prescription of the offense charged

Section 281 of the NIRC, as amended, provides the period of 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 offender is absent from the Philippines. *(Emphasis supplied)*

Further, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the institution of criminal actions shall interrupt the running of the period of prescription, *to wit:*

> Section 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 Republic 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.
>
> **The institution of criminal actions shall interrupt the running of the period of prescription.** *(Emphasis supplied)*

Pursuant to the foregoing provisions, all violations of any provision of NIRC shall prescribe after five (5) years and such period shall begin to run from the date of the commission of the violation of the law. Meanwhile, only the institution of criminal actions shall interrupt the running of the 5-year prescriptive period.

Based on the allegations in the *Information*[1], together with the *Resolution*[2] dated February 21, 2018 and *Joint-Complaint Affidavit*[3] dated September 14, 2017, the Formal Letter of Demand (FLD) and Assessment Notices (ANs)[4] were issued to the accused on January 14, 2013 and personally received by the latter's authorized representative at its registered address. Since the accused is alleged to have failed to file a protest against the said FLD and ANs, the subject tax assessment became final, executory and demandable after the lapse of thirty (30) days from receipt or on February 14, 2013.

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[1] Division Docket, pp. 8-10.
[2] Division Docket, pp. 11-15.
[3] Division Docket, pp. 38-44.
[4] Annexes "I", "I-1", "I-2" and "I-3", *Joint Complaint-Affidavit* dated September 14, 2017, pp. 57-65.

Accordingly, the cause of action of the Bureau of Internal Revenue (BIR) accrued on **February 14, 2013.** It is noted that the due date for payment as indicated on the FLD and ANs was also on February 14, 2013.

As the offense of failure to pay tax under Section 255 of the NIRC, as amended, was committed on February 14, 2013, plaintiff had five (5) years from the said date or until **February 14, 2018** within which to file the *Information* in Court.

In this case, the *Information* was filed only on **March 18, 2019.**

Considering that the five (5) year prescriptive period commenced when the FLD became final, executory and demandable on February 14, 2013, and that the prescriptive period to institute the criminal action lapsed on February 14, 2018, the subject *Information* filed on March 18, 2019 was clearly beyond the five (5) year prescriptive period.

HENRY S. ANGELES
Associate Justice