REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-843** (NPS Docket No. XVI-INV-19B-00064) For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
LIBERTY S. GAGUI, (No. 107 Klawit St., Bo. San Jose Brgy. 127, Caloocan City), *Accused.*	Promulgated: JUL 31 2024 4:02 p.m.

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RESOLUTION

Accused Liberty S. Gagui is charged for violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended. The pertinent portion of the *Information* is quoted below:

> "That on or prior to January 1, 2012, and thereafter, in Caloocan City, Philippines, and within the jurisdiction of this Honorable Court, accused LIBERTY S. GAGUI, owner/proprietor of Celestial Star Marketing, a business which is primarily engaged in the trading on wholesale of hardware, plumbing and heating equipment and registered with the BIR No. 27 - Caloocan City with Tax Identification Number (TIN) 276-246-035, that earned income within the Philippines for the taxable year 2012, and therefore required to pay income tax at the time required under the law or rules and regulations, did then and there, willfully, unlawfully and knowingly fail to pay basic deficiency Income Tax in the amount of Five Million Five Hundred Ten Thousand Six Hundred Eighty Seven Pesos and 2/100 (Php5,510,687.02), exclusive of interests, surcharges and penalties, for the taxable year 2012, despite final assessment notice, including prior and post notices and demands to pay and demand before suit issued by BIR on August 19, 2015, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

In a *Resolution* dated November 26, 2020[1], the Court noted several defects in the Information and the attachments thereto, i.e., that there were inconsistencies in the taxable year and amount of basic deficiency income tax involved, and that the Department of Justice (DOJ) *Investigation Data Form* was not found in the records. The Court ordered the prosecution to take appropriate action on the Court's observations. Meanwhile, the determination of probable cause for the issuance of a warrant of arrest against the accused was held in abeyance.

On February 9, 2021, the prosecution filed one (1) copy of its *Manifestation and Compliance*[2] with attached documents. In a *Resolution* dated February 11, 2021[3], the Court ordered the prosecution to file three (3) additional copies of its *Manifestation and Compliance*, to which the latter complied with on February 26, 2021[4].

On March 3, 2021, the Court issued a Resolution[5] which noted the prosecution's aforementioned submissions and found the existence of probable cause to hold the accused for trial, thereby ordering the issuance of a *Warrant of Arrest* against accused Liberty S. Gagui. The said *Warrant* was issued on March 9, 2021[6].

Subsequently, on July 1, 2021, a *Return of Warrant of Arrest* was received by the Court, stating that the subject of the said *Warrant* was no longer a resident of the above given address. The same was noted by the Court in a *Resolution* dated July 16, 2021[7].

On October 8, 2021, an *Alias Warrant of Arrest* was issued[8]. However, on November 26, 2021, another *Return of Warrant of Arrest*[9] was received by the Court, reiterating that the subject of the said *Warrant* was no longer a resident of the above given address. This was noted by the Court in a *Resolution* dated December 16, 2021[10].

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[1] Division Docket, pp. 33 to 35.
[2] Division Docket, pp. 37 to 39.
[3] Division Docket, p. 72.
[4] Division Docket, p. 110.
[5] Division Docket, pp. 148 to 150.
[6] Division Docket, p.191.
[7] Division Docket, pp. 202 to 203.
[8] Division Docket, p. 199.
[9] Division Docket, pp. 204 to 205.
[10] Division Docket, pp. 210 to 211.

On June 17, 2022, the Court issued a *Resolution* archiving the case. The dispositive portion of the said *Resolution* is hereunder quoted, as follows:

> Records show that to date, accused LIBERTY S. GAGUI remains 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 LIBERTY S. GAGUI be ARCHIVED, without prejudice to its revival upon the arrest of the accused.

Thereafter, on June 28, 2022, a *Return of Alias Warrant of Arrest*[11] was received by the Court, with a similar negative result.

Meanwhile, the number of criminal cases archived due to the failure of authorities to cause the arrest of the accused, together with 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 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:*

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[11] Division Docket, p. 219.

> 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.

In the subject *Information*, the offense charged involves willful failure to pay basic deficiency income tax. Based on jurisprudence[12], 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.

Based on the allegations in the said *Information*, together with the *Complaint Affidavit* dated February 28, 2019[13] and its supporting documents, the Assessment Notices and Formal Letter of Demand (FLD)[14] were issued on November 4, 2014 and served on the accused *via* registered mail at her registered business address on November 14, 2014[15]. After the lapse of thirty (30) days from the taxpayer's receipt thereof, if no valid protest was filed, the tax assessment shall have become final, executory and demandable, creating a cause of action for the Bureau of Internal Revenue (BIR) against the accused for the crime charged.

In the present case, however, while there was an allegation of service of the Assessment Notices and FLD on November 14, 2014, the Court cannot ascertain from the records of the case when the FAN was received by the taxpayer for purposes of determining the onset of the 30-day period.

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[12] *Lim v. Court of Appeals*, G.R. No. L-48134-37, October 18, 1990; and *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999.
[13] Division Docket, pp. 51 to 55.
[14] Annex "E", *Complaint-Affidavit* dated February 28, 2019, pp. 63 to 67.
[15] Division Docket, pars. 5.4 and 5.5 of the *Complaint-Affidavit* dated February 28, 2019, p. 53.

Nevertheless, a careful examination of the Assessment Notices and FLD reveals that the accused was allotted a period of until December 4, 2014, within which to pay the deficiency taxes. Considering that the accused failed to pay the same on or before the said due date, the offense of failure to pay tax under Section 255 of the NIRC was committed on **December 5, 2014**. Accordingly, the plaintiff had five (5) years from the said date or until **December 5, 2019** within which to file the *Information* in Court. In this case, the subject *Information* was filed only on **November 10, 2020**, or clearly beyond the five (5) year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-843 is hereby **WITHDRAWN** from the archives and **DISMISSED** due to prescription of the offense charged. Let the *Warrant 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