

SECOND DIVISION

For: Violation of Section 255 of the
National Internal Revenue
Code of 1997, as amended

- versus -

BERNADETTE L. PARDO,
Sole Proprietor of Pardo Trading,
Accused.

Promulgated:

NOV 11 2024

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To recall, on August 5, 2015, the prosecution filed the *Informations* both dated June 26, 2015¹ against herein accused **BERNADETTE L. PARDO**, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay deficiency value-added tax (VAT) and income tax for taxable year (TY) 2003 despite several notices and demands.

Thereafter, upon the prosecution's submission of the complete documents as ordered by the Court,² a Warrant of Arrest was issued against the accused on August 26, 2015 and September 17, 2024.³

The Court, in the Resolution dated October 2, 2015,⁴ ordered the issuance of Alias Warrant of Arrest⁵ against the accused.

¹ Docket (Crim. Case No. O-520), pp. 6 to 7; Docket (Crim. Case No. O-521), pp. 6 to 7.

² Resolutions dated August 25 and September 15, 2015, Docket (Crim. Case No. O-520), pp. 97 to 99 and 104 to 106, respectively.

³ Docket pp. 102 and 125.

⁴ *Id.* at 111.

⁵ *Id.* at 112.

Subsequently, or on June 1, 2016, the case was archived, without prejudice to its revival immediately upon accused's apprehension.⁶

Upon a careful evaluation of the records, as will be discussed below, this Court finds that the government's right to institute the criminal action has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.⁷

Section 281 of the NIRC of 1997, as amended, provides:

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.

The term of prescription shall not run when the offender is absent from the Philippines. (*Emphasis supplied*)

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years. Prescription begins to run (1) from the day of the commission of the violation of the law; and, (2) if the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment. In both instances, the period is interrupted when judicial proceedings are instituted against the guilty persons.⁸

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*⁹ (*Lim*

⁶ Docket p. 131.

⁷ *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

⁸ *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090, June 21, 2023.

⁹ G.R. Nos. L-48134-37, October 18, 1990.

case), which provides that, for purposes of the commencement of the prescriptive period in relation to the charge of refusal to pay deficiency taxes due, said violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.

In addition, in *Tupaz vs. Ulep*¹⁰ (*Tupaz case*), the Supreme Court, citing the *Lim* case, held that the offense of **failure to pay deficiency taxes** is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period. We quote:

Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. 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, 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. (*Emphasis supplied*)

In the present case, the *Formal Letter of Demand* (FLD) and Assessment Notices were issued on November 7, 2007 and sent to accused on November 9, 2007.¹¹ There was no indication, however, as to when the FLD and Assessment Notices were actually received by accused Pardo. Neither was the date of the receipt of the FLD mentioned in the *Joint Complaint Affidavit* of Reymel E. Jacinto, Michael R. Nitafan, Gemina B. Salvador and Dayne B. Medina, nor was it indicated in the attached certified xerox copy of the FLD.

Considering that plaintiff failed to indicate the date of actual receipt of the FLD by accused Pardo, the Court shall note the date of sending on November 9, 2007 and the due date indicated therein, i.e. December 7, 2007. Thus, counting from the alleged date of the commission of the crime on December 9, 2007, which is 30 days after it was sent to accused Pardo, the *Informations* should have been filed before this Court within five (5) years

¹⁰ G.R. No. 127777, October 1, 1999.

¹¹ Par. 13 of the *Joint Complaint-Affidavit*, Docket (CTA Crim. Case No. O-520) p. 60; Annexes I to I-4 of the *Joint Complaint Affidavit*, Docket (CTA Crim. Case No. O-521), pp. 78 to 85; Par. 13 of the *Joint Complaint-Affidavit*, Docket (CTA Crim. Case No. O-521) p. 64; Annexes I to I-4 of the *Joint Complaint Affidavit*, Docket (CTA Crim. Case No. O-521), pp. 82 to 89

from December 9, 2007, or until **December 09, 2012**. Clearly, when the *Informations* were filed before this Court on **August 5, 2015**, more than two (2) years have passed since the government's right to institute a criminal action had prescribed.

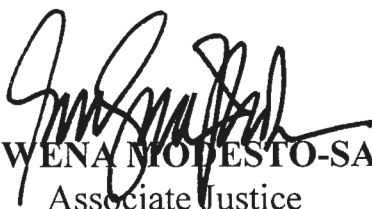
WHEREFORE, premises considered, CTA Criminal Case Nos. O-520 and O-521 are hereby **RETRIEVED** from the archives and, accordingly, **DISMISSED** on the ground of prescription.

Furthermore, the Alias Warrant of Arrest issued against the accused is **RECALLED** and **SET ASIDE**.

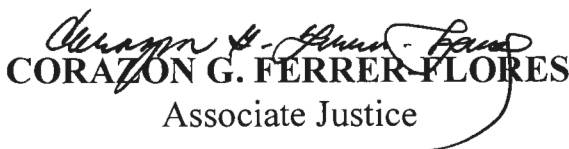
SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice