Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-576**
	For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code of 1997, as amended.
-versus-	Members: DEL ROSARIO, Chairperson, UY, and MINDARO-GRULLA, JJ.
ALEXANDER S. DELMO, Accused.	Promulgated: AUG 30 2016 1:40 p.m.

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RESOLUTION

On August 11, 2016, plaintiff People of the Philippines filed its Compliance, submitting the original or certified true copies of the documents attached in the Information filed in this case.

Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, states:

> "*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."

In the case of *Petronila C. Tupaz v. Honorable Benedicto B. Ulep,*[1] the Supreme Court held that it is when the assessment had become final and unappealable that the five-year period commenced to run and tolled upon filing of the complaint for preliminary investigation before the Department of Justice, to wit:

> "xxx 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)

It appears that in as much as the filing of the complaint was the event taken by the Court to be well within the five-year period, and thus the basis for ruling that the criminal action was timely instituted, it is the filing of the complaint with the Department of Justice that tolls the prescriptive period. This is in accord with the Revised Rules of Criminal Procedure which provides that, where a preliminary

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[1] G.R. No. 127777. October 1, 1999

investigation is required, the filing of complaint institutes the criminal action.[2]

The prosecution submitted a certified true copy of the Final Letter of Demand and Notices of Assessment, which were all issued on December 20, 2006.

Based on the supporting documents submitted by the prosecution, there is no indication as to the actual date when the accused received the FAN and FLD. In *Protector's Services, Inc., vs. Court of Appeals,*[3] the Supreme Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court,[4] that it was received in the regular course of mail. Hence, in the absence of any evidence, the FAN and FLD were deemed received by accused sometime after December 20, 2006. Accused 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 sometime after January 19, 2007.

However, the complaint for preliminary investigation commenced only on July 31, 2014, the date of the complaint-affidavit filed before the Department of Justice, or more than seven (7) years from the date when the FAN and FLD became final and unappealable on January 19, 2007.

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[2] The Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, Rule 110, §1(a); discussed in 50 Ateneo L.J. 547 (2005); Ventus, Vincent Paul S., The Theory of Imprescriptibility in Criminal Tax Actions.
[3] 386 Phil. 611, 623 (2000), cited in Barcelon, Roxas Securities Inc. vs. Commissioner of Internal Revenue, G.R. No. 157064, August 07, 2006.

[4]

RULE 131
Burden of Proof and Presumptions

Sec. 3 . Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx

(v)That a letter duly directed and mailed was received in the regular course of the mail;

xxx xxx xxx

Consequently, the subject Information was filed beyond the five-year prescriptive period provided under Section 281 of the 1997 NIRC.

WHEREFORE, the Compliance filed by the People of the Philippines is hereby **NOTED**. CTA Criminal Case No. O-576 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice