REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CUSTOMER TOUCHPOINT RESOURCE, INC.,
(6/F Admiralty Bldg., Madrigal Business Park, Alabang, Muntinlupa City 1780),

CYNTHIA C. MANABAT,
(c/o Customer Touchpoint Resources, Inc. 6/F Admiralty Bldg., Madrigal Business Park, Alabang, Muntinlupa City 1780),

CAMILLE C. MANABAT,
(c/o Customer Touchpoint Resources, Inc. 6/F Admiralty Bldg., Madrigal Business Park, Alabang, Muntinlupa City 1780),

JUDELYN C. MAGGAY,
(c/o Customer Touchpoint Resources, Inc. 6/F Admiralty Bldg., Madrigal Business Park, Alabang, Muntinlupa City 1780),
Accused.

CTA CRIM. CASE NO. O-1064

For: Violation of Section 255 of the NIRC, as amended

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, JJ.

Promulgated:
FEB 14 2024

x - x

RESOLUTION

This addresses the prosecution's **Manifestation and Compliance**, filed through registered mail on October 17, 2023 and received by this Court on October 23, 2023.

At the outset, the prosecution filed an *Information* on June 13, 2023, attaching therewith the supporting documents, against herein accused for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

However, the Court noted that the *Information* was a mere photocopy while the *Joint Complaint-Affidavit* was not signed by the affiants.[1] As such, the prosecution was directed to submit the (1) original or certified true copy of the Information; and, (2) duly signed *Joint Complaint-Affidavit*. Consequently, the determination of probable cause for the issuance of the Warrant of Arrest against the accused was held in abeyance.

Subsequently, the prosecution posted its *Compliance* on July 21, 2023, submitting the certified true xerox copies of the *Information,* dated May 30, 2023, and the duly signed *Joint Complaint-Affidavit,* dated February 28, 2023.[2]

Notwithstanding, the Court observed that the registry receipt in the *Preliminary Collection Letter* (PCL) was partially blurred that it could not determine when the same was mailed to and received by the accused.[3] In addition, the Court noted that the *Final Notice Before Seizure* (FNBS) did not indicate if it was sent *via* registered mail nor was there any allegation of when it was mailed to and received by the accused.[4]

Hence, the instant *Manifestation and Compliance*.

The prosecution states that, upon perusal of the Bureau of Internal Revenue (BIR) records, the PCL dated May 3, 2017 was mailed on May 4, 2017, as evidenced by the Registry Receipt No. 031290. The fact of receipt of the accused, however, cannot be determined anymore because Philpost only retains its records for a period of three (3) years. As such, since the mail matter was dated within 2017 and more than three (3) years have passed, no record can be found anymore to verify the fact of receipt of the PCL by the taxpayer. As regards the FNBS, the prosecution avers that the FNBS dated May 17, 2017 has no attached Registry Receipt.

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[1] Resolution dated July 10, 2023, Docket, pp. 67 to 69.
[2] Docket, pp. 70 to 89.
[3] Resolution dated October 6, 2023, Docket.
[4] *Ibid.*

Nonetheless, the prosecution believes that the PCL and the FNBS are just follow up letters to the taxpayer/accused giving them the opportunity to make the necessary settlement of their tax liabilities before issuance/service/execution of Warrants of Distraint and/or Levy and Garnishment.

According to the prosecution, the *Formal Assessment Notice* (FAN) issued on November 25, 2015 became final, executory and demandable from failure of accused to file protest and submit documents in support of such protest. The accused allegedly received the FAN on December 1, 2015 and within thirty (30) days therefrom, or until December 31, 2015, accused may protest the FAN. Since there was no protest filed, and even prior to the issuance of the follow up letters (i.e., PCL and FNBS), the tax assessments issued to the accused became final, executory and demandable already from December 31, 2015 onwards.

Accordingly, the prosecution's *Manifestation and Compliance* is **NOTED.**

That having been settled, this Court shall now proceed with the determination of the existence of probable cause for the issuance of warrant of arrest against accused pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[5]

On June 13, 2023, the prosecution filed the *Information,* dated May 30, 2023, against herein accused Customer Touchpoint Resource, Inc. and its responsible corporate officers, Cynthia C. Manabat, Camille C. Manabat, and Judelyn C. Maggay, for violation of Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended, allegedly committed as follows:

> "On or about December 1, 2015 and thereafter, in the City of Makati, the Philippines, accused Cynthia C. Manabat, Camille C. Manabat and Judelyn C. Maggay, as President, Treasurer and Senior Manager for Accounting and Finance respectively, of accused corporation Customer Touchpoint Resources, Inc., a juridical person required to pay tax, did then and there willfully, unlawfully and feloniously fail and refuse to pay the deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation and Expanded Withholding Tax for taxable year 2012 in the total amount of Php42,908,656.53, inclusive of interest and penalties, despite due notice and demand, in violation of the aforesaid law.

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[5] SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

CONTRARY TO LAW."

The prosecution presented the original/certified true copies of the following supporting documents for the examination of the Court:

1. *Department of Justice (DOJ) Resolution* dated May 30, 2023 signed by Assistant City Prosecutor Kristine Nicole M. Espiritu and recommended by Deputy City Prosecutor Josefa D. Laurente and approved by City Prosecutor Dindo G. Venturanza;

2. *Investigation Data Form* with NPS Docket No. XV-05-INV-23C-0903;

3. *Referral Letter* dated February 21, 2023 of Regional Director Edgar B. Tolentino, BIR, Makati City with attached Revenue Delegation Authority Order (RDAO) No. 2-2007; and

4. *Joint Complaint-Affidavit* of Revenue Officers Rhodora C. Balazo and Ronie Cris R. Giba, with attached Annexes "A" to "O" and "Q" to "R".

After careful consideration of the allegations in the *Information* and personally examining and evaluating the supporting documents submitted, the Court finds no probable cause to issue a warrant of arrest as 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.[6]

As to the *first* consideration, Section 281 of the NIRC of 1997, as amended, provides that the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years, to wit:

> "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.**

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

> **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)*

As to the *second* consideration, the aforecited provision states that 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.

Lastly, for the *third* consideration, Section 281 of the NIRC of 1997, as amended, likewise provides that the prescriptive period is interrupted when *judicial* proceedings are instituted against the guilty persons. In relation thereto, Section 2, Rule 9 of the RRCTA, as amended, provides that the institution of the criminal action before this Court interrupts the running of the prescriptive period, 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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription**." *(Emphasis supplied)*

Based on all the foregoing, it is necessary to first determine whether the day of the commission of the violation is known or unknown based on the allegations in the Information and its supporting documents to ascertain the commencement of the five-year prescriptive period.

In the present case, the violation, as alleged in the Information, is that the accused *"willfully, unlawfully and feloniously fail and refuse to pay the deficiency Income Tax xxx despite due notice and demand"*. In addition, based on the Commissioner of Internal Revenue's (CIR's) *Referral Letter,* dated February 21, 2023, and *DOJ Resolution,* dated May 30, 2023, the accused corporation and its responsible corporate officers are being charged of willful failure to pay deficiency tax liabilities despite due notice and demand.

Clearly, the violation herein is for willful failure to pay taxes under Section 255 of the NIRC of 1997, as amended.

Pertinent thereto is the case of *Petronila C. Tupaz vs. Honorable Benedicta B. Ulep, et al.,*[7] which similarly involves the offense of failure to pay tax despite demand, where the Supreme Court determined the day of the commission of the violation of the law in relation to the commencement of the period of prescription of the criminal action, *viz*:

> "**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)*

Based on the foregoing, the violation of willful failure to pay deficiency taxes is committed only after the finality of the assessment coupled with the taxpayer's willful refusal to pay taxes within the allotted period.

Here, the allegations in the *Information* and its supporting documents reveal that the FAN with Details of Discrepancies issued on November 25, 2015 was received by a certain Frances Napawit on December 1, 2015;[8]

[7] G.R. No. 127777, October 1, 1999.
[8] Annex "H", Docket, pp. 44 to 52.

hence, the accused had thirty (30) days therefrom, or until December 31, 2015, to protest or question the assessment. Nevertheless, since December 31, 2015 was declared a special non-working holiday and January 1, 2016 was a regular holiday, and further, January 2 and 3, 2016 were Saturday and Sunday, respectively, accused corporation should have filed its protest on the next business day which was January 4, 2016.

Records show that accused corporation belatedly filed its *Protest* on January 8, 2015.[9] The FAN, thus, became final and unappealable on January 5, 2016 for failure of the accused corporation to timely file its protest. Such fact was known to the BIR as can be observed in its *Letter* dated January 26, 2016, to wit:[10]

> "xxx. In this regard, the aforesaid FAN was received by your office on December 1, 2015 and the **protest letter was filed only on January 8, 2016 which is beyond the 30-day period to protest administratively**, consequently **the herein assessment became final, executory and demandable**." *(Emphasis supplied)*

Considering the foregoing, it was on January 5, 2016 that the accused committed the violation of Section 255 of the NIRC of 1997, as amended, and, consequently, the prescriptive period of five (5) years commenced therefrom. Records further show that, after the issuance of the PCL dated May 3, 2017, complainant BIR then issued the FNBS dated May 17, 2017, indicating that the accused refused to pay its tax liability despite demand.[11]

Counting from the finality of the assessment, the Referral Letter for preliminary investigation should have been filed before the DOJ <u>within five (5) years from January 5, 2016, or until January 5, 2021</u>. Thus, it is apparent that the five-year prescriptive period has already lapsed when the *Referral Letter* and the *Joint Complaint-Affidavit* for preliminary investigation was filed before the DOJ on <u>February 21, 2023</u> and when the instant Information was filed before this Court on <u>June 13, 2023</u>. Notably, it took more than seven (7) years to file the Information.

Based on the foregoing, the Court finds that the instant Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the Court finds no probable cause to issue a warrant of arrest in view of the prescription of the criminal offense charged.

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[9] Annex "M", pp. 53 to 56.
[10] Annex "N", Docket, p. 57.
[11] Annex "R", Docket, p. 60.

Accordingly, CTA Criminal Case No. O-1064 is **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice