REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-913

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

CESAR VACUNAWA LEBITE,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SENIOR ASST. STATE PROS. MA. CRISTINA A. MONTERA-BAROT
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
Bureau of Internal Revenue
Legal Division, BIR Revenue Region No. 6-Manila
Solana St., Intramuros, Manila

ATTY. MARK OLIVER C. ASIS
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6th Floor, Justice Cecilia Muñoz Palma Hall,
DOJ Building, Quezon City Hall Complex, Quezon City

CESAR VACUNAWA LEBITE
26 Kabilugan St., Gulod, Novaliches
Quezon City

MS. JUDITH V. LAROCO
Chief Judicial Staff Officer, Cash Division
Court of Tax Appeals
G/F, CTA Building I, National Government Center
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **September 6, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 9, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim Case No. O-913** For: Violation of Section 255 (Failure to Pay Tax) of the NIRC of 1997, as amended
-versus-	*Members:* **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
CESAR VACUNAWA LEBITE, (At-Large: Address: Sitio-3 Kabilugan St., Gulod, Novaliches, Quezon City), *Accused.*	Promulgated: SEP 06 2024 9:55AM

x- -x

RESOLUTION

For this Court's resolution are:

1. Plaintiff's ***Motion for Reconsideration (Re: Resolution dated 26 March 2024)*** filed on April 15, 2024

2. Accused's ***Motion to Release Cash Bond*** filed on April 26, 2024.

Plaintiff's *Motion for Reconsideration (Motion)* seeks the reversal of the Court's ruling in its Resolution dated March 26, 2024, granting accused's *Demurrer to Evidence (With Prior Leave of Court)* and dismissing the instant case. The dispositive portion reads:

> **WHEREFORE**, premises considered, accused's *Demurrer to Evidence (with prior leave of Court)* is **GRANTED**.

> Accordingly, CTA Crim Case No. O-913 is **DISMISSED,** and the accused, **CESAR VACUNAWA LEBITE,** is **ACQUITTED** on the grounds of insufficiency of evidence and prescription of the offense charged.
>
> **SO ORDERED**.

Plaintiff moves for reconsideration insofar as the civil aspect of the case is concerned. According to plaintiff, in relation to the alleged lack of a Notice of Informal Conference (**NIC**), a Post-Reporting Notice (**PRN**) dated May 29, 2012, has been issued to accused. Anent accused's alleged non-receipt of the Letter of Authority (**LOA**), plaintiff points to accused's admission of his registered address in the Pre-Trial Order and his previous connection to Jade Bros. International Logistics in his Judicial Affidavit. Further, on the issue of non-receipt of the Preliminary Assessment Notice (**PAN**) and the Final Assessment Notice (**FAN**), plaintiff states that the PAN and the FAN were transmitted to the Post Office for mailing and that there exists a presumption that these notices were received in the ordinary course of mail.

Finally, plaintiff contends that the offense has not yet prescribed, citing *People vs. Lee.*[1] Plaintiff suggests that the prescriptive period is reckoned from the finality of the FAN on December 24, 2012, up to the filing of the complaint before the Department of Justice on December 10, 2015.

On the other hand, in his *Opposition*, accused observes that nowhere in the grounds raised by the prosecution pertains to proving his alleged civil liability. Accused also emphasizes that a judgment of acquittal cannot be reconsidered to avoid double jeopardy.

Accused also states that the prosecution failed to prove (1) that he was the owner and proprietor of a business under the name and style "Blue Alcindor Enterprise," (2) that there was actual receipt of LOA, (3) that the employee who received the LOA was an authorized representative and (4) that the PAN and the FAN were received by accused.

We find for accused.

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[1] G.R. No. 234618, September 16, 2019.

Before proceeding to the merits of the *Motion*, the Court notes accused's observation that the prosecution emphasized that it is seeking reconsideration as to the civil aspect of the case. Yet, the arguments set forth in its *Motion* discuss the criminal aspect of the case. This incoherence in the *Motion* leaves the Court confused about the relief sought by the prosecution.

Nevertheless, the Court deems it proper to discuss the assailed *Resolution*.

First, anent the issue of accused's non-receipt of the LOA, plaintiff points to accused's admission of his registered address in the Pre-Trial Order and his previous connection to Jade Bros. International Logistics in his Judicial Affidavit. The Court's finding in the assailed Resolution is reiterated, *viz.*:

> The records are clear that RO Villaflor, upon the alleged instruction of the building administration, personally served the LOA to **another room**, *i.e.*, Room 330, within the same building as the registered address of the accused, i.e., Room 326, Regina Building. Without proof that the person who received the LOA in Room 330 is a duly authorized representative of the accused, We rule that the LOA was improperly served.
>
> The improper service of the LOA renders the assessment void and negates the presence of *willfulness* as an element of the crime of failure to pay any tax under Section 255 of the NIRC of 1997, as amended.

Accordingly, accused's admission of his registered address is inconsequential as, despite the admission, the BIR served the LOA to *another room,* which was not the registered address of accused. Further, any previous connection to another entity shall never be construed as an authority to receive the LOA on behalf of accused. Such an interpretation is unfounded in law and jurisprudence. With this, the Court affirms the finding that the LOA was improperly served.

Second, anent the issue of the lack of NIC, the prosecution states that a PRN dated May 29, 2012, has been issued to accused.

Indeed, the records bear a PRN dated May 29, 2012, marked as Exhibit "A-09."[2] However, the PRN is not the NIC envisioned by Revenue Regulations (RR) No. 12-1999.[3] A cursory reading of the PRN addressed to accused reveals that it did not contain any invitation to schedule a conference/discussion between the BIR and accused, as required under pertinent regulations. Accordingly, this Court is constrained to rule that no NIC has been served.

Third, on the issue of non-receipt of the PAN and the FAN, plaintiff states that they were transmitted to the Post Office for mailing and that there is a presumption that these notices were received in the ordinary course of mail.

Plaintiff's argument fails to impress.

It bears emphasis that the presumption that these notices were received in the ordinary course of mail is merely disputable. Thus, the Court discussed in the assailed Resolution:

> A perusal of the records and the testimonies of the prosecution witnesses shows that plaintiff was able to provide the registry receipt regarding the transmittal of the PAN[4] and FLD/FANs. However, plaintiff failed to prove receipt of the accused of the PAN and FLD/FANs and merely relied on the disputable presumption established under the Rules of Court that "a letter duly directed and mailed" is presumed to have been received by the addressee thereof "in the regular course of the mail." Plaintiff did not even lay the basis for the said presumption to apply in relation to the said assessment notices.
>
> Notwithstanding the presentation of the registry receipt in relation to the sending of the PAN and FLD/FANs, the Supreme Court explained in *CIR v. South Entertainment Gallery, Inc.*[5] that the presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption which may be controverted. According to the Supreme Court, <u>direct denial</u> *shifts* the burden to the party favored by the presumption to prove that the addressee received the mailed matter.

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[2] Docket, p. 38.
[3] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty
[4] Exhibit "P-4-a". Docket, p. 45.
[5] G.R. No. 223767, April 24, 2023.

> Considering that plaintiff failed to refute the accused's direct denial as stated in the Pre-trial Order, the Court cannot apply the presumption. To repeat, the accused's direct denial that he received the LOA, the PAN, and FLD/FANs shifts the burden to the prosecution to prove that the accused actually received the same. [*Citations omitted.*]

With the above discussion, the Court maintains its ruling that the prosecution did not sufficiently prove the essential element of the accused's ***willful failure to pay tax***. This failure, in turn, necessitates the acquittal of accused.

Further, in relation to the issue of prescription, the prosecution fails to convince this Court anew. Contrary to the prosecution's argument, the prescriptive period is not counted up to the filing of the complaint before the Department of Justice on December 10, 2015. Instead, it is the filing of the *Information* before the Court that must fall within the five-year prescriptive period.

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. [*Emphases and underscoring supplied.*]

As stated in the assailed Resolution, in counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, it is **the filing of the criminal information that must fall within the five-year prescriptive period**.

Thus, pursuant to the *Lim case,* plaintiff had five (5) years counted from December 24, 2012, or until **December 24, 2017**, to file the *Information* in Court. The *Information* dated June 23, 2017, was filed with this Court only on **May 16, 2022**. Following plaintiff's allegation that the FLD/FANs were received, the filing of the *Information* would have already been time-barred for more than four (4) years.

Finally, as the PAN and FLD/FANs were not properly served to and received by the accused, the assessment is invalid, and no civil liability can arise from it.

In sum, plaintiff's *Motion* on the civil aspect of the case must fail, as the accused cannot be held civilly liable for the alleged deficiency taxes without having been properly notified of the assessment.

WHEREFORE, premises considered, plaintiff's ***Motion for Reconsideration (Re: Resolution dated 26 March 2024)*** is **DENIED** for lack of merit.

Accordingly, accused's ***Motion to Release Cash Bond*** filed on April 26, 2024 is hereby **GRANTED**. The cash bail bond posted by the accused is hereby **CANCELLED** and ordered **RELEASED** to the accused upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

ON OFFICIAL BUSINESS
ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice