REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case. O-914** (NPSD No. XVI-INV-15L-00473)
-versus-	For: Violation of Section 255 (Failure to Pay Tax) of the 1997 NIRC, as amended
	Members:
CESAR VACUNAWA LEBITE, (At-Large: Address: Sitio-3 Kabilugan St., Gulod, Novaliches, Quezon City), *Accused.*	**DEL ROSARIO,** ***PJ, Chairperson,*** **MANAHAN, and REYES-FAJARDO** ***JJ.***
	Promulgated: NOV 07 2022 3:37pm

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RESOLUTION

In the Resolution dated September 20, 2022, the Court directed the prosecution to submit proof of actual receipt of the Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN), and Formal Letter of Demand (FLD) pursuant to Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals.

> 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".** (Emphasis supplied)

Records Verification dated October 4, 2022 states that the prosecution failed to submit proof of actual receipt of the PAN, FAN and FLD.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On May 16, 2022, an Information was filed against accused Cesar Vacunawa Lebite indicting him of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The accusatory portion of which states:

> That on or about May 15, 2013 and thereafter, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Cesar Vacunawa Lebite, a Filipino citizen, sole owner and proprietor of a business under the name and style "Blue Alcindor Enterprise", with registered Tax Identification Number (TIN) 913-477-128-000 and derived income in the amount of Sixty Eight Million Eighty One Thousand Seven Hundred Fifty Three Pesos and 56/100 (Php68,081,753.56) from his business and therefore required by law to file his income tax return and legally obligated to pay the corresponding tax due pursuant to Sections 51 and 74 of the NIRC, of 1997, as amended, did then and there, knowingly, unlawfully and willfully fails and refuses to pay his basic deficiency income tax (IT) liability for the taxable year 2010 in the total amount of Twenty One Million Seven Hundred Fifty One Thousand One Hundred Sixty One Pesos and 24/100 (Php21,751,161.24), exclusive of interest and surcharge, despite repeated demands as specified under the law and regulations, and receipt of several of the assessment notices from the complainant demanding payments thereof, including final notice before seizure issued by the BIR on May 15, 2013, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated June 23, 2017 issued by Senior Assistant State Prosecutor Ma. Cristina A. Montera-Barot, recommending that accused Cesar Vacunawa Lebite be charged for violation of Section 255 (willful failure to pay tax) of the NIRC of 1997, as amended;

2. Authority and approval for the filing and institution of criminal Complaint against Cesar Vacunawa Lebite, issued by the Commissioner of Internal Revenue (CIR), and filed with the Department of Justice (DOJ) on December 10, 2015; and

3. Joint Complaint Affidavit (JCA) of Mr. Leo S. Castillo and Ms. Lorna A. Lazaro dated December 10, 2015 and filed with the DOJ on even date, with the following attachments:

a. Assessment Notices both dated October 24, 2012;[1]
b. Formal Letter of Demand dated October 24, 2012;[2]
c. Details of Discrepancy;[3]
d. Computerized Matching conducted by the BIR;[4]
e. Details of Taxpayer's Customer's Records;[5]
f. Letter of Authority No. 030-2012-00000048 dated January 12, 2012;[6]
g. Checklist of Requirements dated January 12, 2012;[7]
h. First Notice dated February 8, 2012;[8]
i. Second Final Notice dated February 23, 2012;[9]
j. Certification of No Record;[10]
k. Post Reporting Notice dated May 29, 2012;[11]
l. Memorandum dated June 18, 2012;[12]
m. First Indorsement dated June 20, 2012;[13]
n. Assignment Slip;[14]
o. Preliminary Assessment Notice dated August 13, 2012;[15]
p. Letter to the Postmaster dated August 10, 2012;[16]

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[1] Annexes "A" and "B," JCA.
[2] Annex "C," JCA.
[3] Annex "C-1," JCA.
[4] Annex "D" and "E," JCA.
[5] Annex "E-1," JCA.
[6] Annex "F," JCA.
[7] Annex "G," JCA.
[8] Annex "H," JCA.
[9] Annex "I," JCA.
[10] Annex "J," JCA.
[11] Annex "K," JCA.
[12] Annex "L," JCA.
[13] Annex "M," JCA.
[14] Annex "N," JCA.
[15] Annex "O," JCA.

q. Transmittal dated August 10, 2012;[17]
r. 1st Notice Before Seizure dated February 8, 2013;[18]
s. Final Notice Before Seizure dated May 15, 2013;[19]
t. Memorandum of Assignment dated July 5, 2013;[20]
u. Warrants of Garnishment dated February 19, 2014;[21]
v. Warrant of Distraint and/or Levy dated July 23, 2013;[22]
w. Memorandum dated May 29, 2015;[23]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[24] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the wilful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the prosecution claimed that the FAN and FLD were sent to accused through registered mail on October 24,

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[16] Annex "P," JCA.
[17] Annex "Q," JCA.
[18] Annex "R," JCA.
[19] Annex "S," JCA.
[20] Annex "T," JCA.
[21] Annexes "U" to "Y," JCA.
[22] Annex "Z," JCA.
[23] Annex "AA," JCA.
[24] G.R. Nos. 48134-37, October 18, 1990.

2012. However, the records of the case will show that there was no evidence that the FAN and FLD both dated October 24, 2012 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

Assuming for the sake of argument that accused indeed received the alleged FAN and FLD, the case should still be dismissed on the ground that the Information was filed beyond the five-year prescriptive period provided under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 281 of the NIRC of 1997, 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.
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> 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 present case, the information states that the crime of unlawful and willful failure and refusal to pay taxes was allegedly committed "on or about May 15, 2013 and thereafter". Considering that the subject Information was filed before this Court on May 16, 2022 or more than nine (9) years from the alleged date of the commission of the crime, it is clear that the subject Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause and by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice