REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. A-8
(Case Nos. R-MKT-20-01449-CR and R-MKT-20-01450-CR)

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and,*
CUI-DAVID, ***JJ.***

Promulgated:

ANGELO R. BALILI,
Accused.

JAN 25 2022

1:20 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is an appeal[1] filed pursuant to Section 3(b)(2)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). The appeal seeks the reversal of the Orders dated 25 September 2020[3] and

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1 Notice of Appeal dated 03 February 2021, Division Docket, pp. 22-25.

2 **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

...

b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

...

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed[.]

...

3 RTC Records, pp. 217-221.

07 January 2021[4] (**assailed Orders**) issued by the Regional Trial Court (**RTC/court *a quo***) of Makati City, Branch 146 in the case of *People of the Philippines v. Angelo R. Balili,* docketed as R-MKT-20-01449-CR and R-MKT-20-01450-CR.

The dispositive portion of the assailed Order dated 25 September 2020 reads:

> ...
>
> WHEREFORE, in view of the foregoing, the Motion to Quash is granted. The cases against accused are hereby dismissed for being filed beyond the prescriptive period stated in Section 281 of the National Internal Revenue Code.
>
> SO ORDERED.
>
> ...

While, the dispositive portion of the assailed Order dated 07 January 2021 reads:

> ...
>
> **WHEREFORE**, all things considered, the prosecution's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

The antecedent facts follow.

On 02 June 2020, a criminal information[5] for tax evasion was filed against QNX Solutions, Incorporated (**QNX**), herein accused-appellee Angelo R. Balili (**accused-appellee**) in his capacity as President thereof, and two (2) other corporate officers. The information alleges the following:

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4 Id., pp. 260-263.
5 Id., pp. 1-2.

> ...
>
> That on or about 06 January 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused... to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay the company's **documentary stamp tax** obligations for the year 2010, in the amount of Twenty-Two Thousand Three Hundred Forty-Four Pesos (**Php22,344.00**), exclusive of surcharges and interest, under BIR Assessment Notice No. DS-ELA2039-10-13-0347, did then and there wilfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government
>
> **CONTRARY TO LAW.**
>
> ...

As alleged by plaintiff-appellant People of the Philippines (**plaintiff-appellant**) prior to the institution of the criminal action, a formal assessment was instituted against QNX. As a result, the Bureau of Internal Revenue (**BIR**) issued against QNX a Formal Assessment Notice (**FAN**) dated 09 September 2013, which was received by latter on 13 September 2013. The FAN demanded that QNX pay the taxes indicated therein on or before 09 October 2013.

Given QNX's failure to heed the BIR's demand, a Preliminary Collection Letter (**PCL**) and a Final Notice Before Seizure (**FNBS**) were issued against QNX on 17 December 2013 and 06 January 2014, respectively. Thereafter on 26 June 2014, it also issued a Warrant of Distraint and/or Levy (**WDL**). However, despite receiving the aforesaid notices and demands, QNX's tax obligations remained unpaid, prompting thus the BIR to file a criminal complaint with the Department of Justice (**DOJ**) on 11 April 2019.

After the preliminary investigation at the DOJ, plaintiff-appellant filed with the RTC the above criminal case. Later, the RTC issued a warrant of arrest[6] against accused-appellee and his co-accused.

[6] Id., p. 152.

Before herein accused-appellee could be arraigned, he filed a "Motion to Quash with Motion to Cancel Arraignment"[7] (**Motion to Quash**). Therein, he argued that the offense charged against him had already prescribed.

Accused-appellee contended that the date (06 January 2014) of QNX's receipt of the FNBS should not be considered as the date when the offense occurred. Instead, he argued that the alleged commission of the crime should be after 13 October 2013 or thirty (30) days after the receipt of the FAN (when the period of demand to pay the alleged tax deficiencies expired).

Given that the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides for a five-year prescription for violations thereunder, accused-appellee concluded that when the BIR filed its criminal complaint with the DOJ on 11 April 2019, its action was already barred by prescription.

In its Comment/Opposition to the Motion to Quash (**Comment**), plaintiff-appellant argued that the five-year prescription period should begin to run from the filing of the criminal complaint (with the DOJ) on 11 April 2019, making the subsequent filing of the criminal information in the RTC on 07 February 2020 well within the prescriptive period. His argument is hinged on an interpretation of Section 281 of the NIRC of 1997, as amended, which provides, thus:

> ...
> 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.

[7] Id., pp. 183-189.

> The term of prescription shall not run when the offender is absent from the Philippines.[8]
>
> ...

In ruling[9] in accused-appellee's favor, the RTC found that the reckoning date of the prescriptive period should be counted from the date of the final notice (and not coupled with the filing of the criminal complaint) pursuant to the ruling of the Supreme Court in *Lim, Sr., et al. v. Court of Appeals, et al.*[10] (**Lim**).

Aggrieved by the dismissal of the criminal case, then plaintiff (now plaintiff-appellant) filed a Motion for Reconsideration[11] (**MR**) which the RTC also denied.[12]

Hence, this appeal.

Plaintiff-appellant assigns the following errors to the conclusions reached by the RTC:

> I.
> THE COURT *A QUO* ERRED IN DISMISSING THE CRIMINAL COMPLAINT AGAINST ACCUSED-APPELLEE ON THE GROUND OF PRESCRIPTION.
>
> II.
> THE COURT *A QUO* ERRED IN TAKING COGNIZANCE OF ACCUSED-APPELLEE'S MOTION TO QUASH WITH MOTION TO CANCEL ARRAIGNMENT.
>
> III.
> THE COURT *A QUO* ERRED IN GRANTING ACCUSED-APPELLEE'S MOTION TO QUASH WITH MOTION TO CANCEL ARRAIGNMENT.

The Court's ruling follows.

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8 Emphasis supplied.
9 Supra at note 3.
10 G.R. Nos. L-48134-37, 18 October 1990.
11 RTC Records, pp. 235-244.
12 Supra at note 4.

Plaintiff-appellant stands by its interpretation of Section 281 of the NIRC of 1997, as amended, that the offense charged against accused-appellee should be counted from the date of discovery coupled with the institution of the criminal complaint with the DOJ. According to the prosecution, it had until 11 April 2024 to file the criminal information counting five (5) years from filing the criminal complaint.

The prosecution also raises a new issue regarding the absence of a notice of hearing in accused-appellee's Motion to Quash and the latter's failure to furnish a copy of the same to plaintiff-appellant. It contends that this makes accused-appellee's Motion to Quash a mere scrap of paper that the court *a quo* should not have been entertained.

Accused-appellee, on the other hand, maintains that the date of the offense's commission could already be ascertained when QNX allegedly failed to pay the taxes due within the period provided in the PAN. Thus, when QNX was notified of the FAN and the BIR's demand to pay the taxes assessed therein, the offense of tax evasion was immediately committed the moment the period for payment expired (which he argues should be on 13 October 2013). Counting therefrom, he contends that the subsequent institution of the criminal complaint (with the DOJ) on 11 April 2019 and criminal case (before the RTC) on 07 February 2020 was already made beyond the five-year prescriptive period.

Before tackling the issue of prescription, the Court finds it necessary to first address the plaintiff-appellant's argument regarding the lack of notice of hearing in accused-appellee's Motion to Quash. Although a similar issue was not raised in its Comment or in the MR before the RTC, it is best to put it to rest as it stabs at the very heart of due process.

PLAINTIFF-APPELLANT'S RIGHT TO DUE PROCESS WAS NOT VIOLATED.

In a plethora of cases, litigious motions have been considered *pro forma* for failure of the movant to set a hearing in accordance with the so-called "three-day notice rule" provided under former Sections 4 and 5[13], now Section 5[14], Rule 15 of the Rules of Court, as amended by A.M. No. 19-10-20-SC.[15] This duty imposed on the movant is aimed to afford the opposing party of procedural due process. Such intent has been expressed by the Supreme Court in *Cabrera v. Ng*[16], to wit:

> ...
> The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."
> ...

Despite being the standard, austere compliance with the three-day notice rule admits of exception. In *Preysler, Jr. v. Manila Southcoast Development Corporation*[17], the Supreme Court explains:

> ...
> The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the

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13 **Sec. 4.** *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

Sec. 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

...

14 **Sec. 5.** *Litigious motions.* — (a) Litigious motions include:

...

2. Motion to dismiss;

...

(b) All motions shall be served by personal service, accredited private courier or registered mail, or electronic means so as to ensure their receipt by the other party.

(c) The opposing party shall file his or her opposition to a litigious motion within five (5) calendar days from receipt thereof. No other submissions shall be considered by the court in the resolution of the motion.

15 2019 Amendments to the 1997 Rules of Civil Procedure.

16 G.R. No. 201601, 12 March 2014; Citations omitted.

17 G.R. No. 171872, 28 June 2010; Citation omitted and emphasis in the original text.

> literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority...
>
> ...
>
> **The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based...**
>
> ...

A perusal of the records show that plaintiff-appellant was able to file its Comment to accused-appellee's Motion to Quash. In its brief[18], it even admitted its receipt of a copy of the assailed motion (albeit from the court *a quo*). At this point, whether or not there is truth to plaintiff-appellant's further claim that accused-appellee failed to supply the former with the copy of the assailed motion is of no moment. As it stands, plaintiff-appellant was fully notified of the filing and contents of the assailed motion. The court *a quo* also allowed it an ample time to oppose the assailed motion as shown in the court *a quo*'s Order[19] dated 08 September 2020.

It is a well-entrenched principle that technicalities are surrendered in the best interest justice. In *Pimentel v. Adiao, et al.*[20], the Supreme Court explains, thus:

> ...
>
> The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to [the] instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation.
>
> ...

Judging from these facts, the right of plaintiff-appellant to due process remained intact. Procedural due process merely requires that a

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18 Appellant's Brief filed 29 July 2021, Division docket, pp. 36-49.

19 RTC Records, p. 208.

20 G.R. No. 222678, 17 October 2018; Citation omitted.

party be given notice and a real opportunity to be heard[21], both of which were afforded the prosecution.

The Court will now proceed to address the issue of prescription of the offense that filed against accused-appellee.

THE OFFENSE CHARGED HAD ALREADY PRESCRIBED.

The Court finds no reversible error in the assailed Orders of the court *a quo*. In *Lim*, as the RTC points out, the case involves several charges of tax evasion committed through filing fraudulent income tax returns (**ITRs**) and refusing to pay deficiency taxes. As cited by plaintiff-appellant therein, the Supreme Court, in interpreting Section 354, now Section 281 of the NIRC of 1997, as amended, stated thus:

> ...
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.[22]
> ...

However, it must be emphasized that the Supreme Court applied the foregoing rule only insofar as the tax evasion charges committed through filing fraudulent returns are concerned. In the said case, the Supreme Court declared categorically that as regards the charges based on willful refusal to pay taxes, the prescription of offenses would begin to run from the taxpayer's receipt of the notice and demand for payment of the assessed tax deficiency, to wit:

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21 *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, 12 November 2013.

22 Supra at note 9.

> ...
>
> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
> > (b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (Emphasis supplied)
>
> 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 allotted 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.[23]
>
> ...

From the foregoing disquisitions, it is clear that the date of commission of the crime of tax evasion would depend on the mode of commission as alleged in the information charged.

A perusal of the information filed against accused-appellee would readily reveal that the crime of tax evasion charged therein was due to willful non-payment. The pertinent allegations in the information read:

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[23] *Lim, Sr., et al. v. Court of Appeals, et al.*, supra at note 9; Italics supplied and underscoring in the original text.

> ...
>
> ... accused... did then and there **wilfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand** and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.[24]
>
> ...

In Revenue Memorandum Circular (**RMC**) No. 101-90[25], it is stated:

> ...
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
> (a) The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.
>
> ...

Given the plaintiff-appellant's allegations in the information filed against accused-appellee, the crime of tax evasion charged against the latter was committed after QNX failed to pay its tax obligations (despite notice thereof and awareness of the deadline for its payment).

Applying the principles laid down in *Lim*, the tax evasion in the present case was committed after the BIR's service of notice and demand on 13 September 2013. Since the demand for payment contained in the FAN was not immediate, said demand could only

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24 Supra at note 5; Emphasis supplied.

25 *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

attain finality after the lapse of 30 days from QNX's receipt thereof, or on 14 October 2013. Therefore, to toll the running of the five-year prescription period, the BIR should have filed a criminal complaint with the DOJ on 14 October 2018 at the latest. Thus, when the criminal complaint was filed only on 11 April 2019, the same was already a forgone action or remedy. This is in accordance with Section 1(a), Rule 110 of the Rules of Court which provides:

> ...
>
> **RULE 110**
> **Prosecution of Offenses**
>
> **Sec. 1.** *Institution of criminal actions.* — Criminal actions shall be instituted as follows:
>
> (a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.
>
> ...
>
> The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws.
>
> ...

It now becomes apparent that plaintiff-appellant misconstrued *Lim* when it tacked the running of the offense's prescription from the BIR's filing of the criminal complaint with the DOJ. As cited by accused-appellee, in cases involving willful non-payment, the case of *Tupaz v. Ulep, et al.*[26] remains controlling. There, the Supreme Court ruled:

> ...
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. v. 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

[26] G.R. No. 127777, 01 October 1999; Citations omitted.

> 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.
>
> ...

All told, the Court finds no cogent reason to reverse the ruling of the court *a quo*.

WHEREFORE, the foregoing considered, plaintiff-appellant's appeal filed on 03 February 2021 is hereby **DENIED** for lack of merit. Accordingly, the Orders dated 25 September 2020 and 07 January 2021 issued by the Regional Trial Court of Makati City, Branch 146, in the case entitled, *People of the Philippines v. Angelo R. Balili*, docketed as R-MKT-20-01449-CR and R-MKT-20-01450-CR are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice