REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ULANDAY CONSTRUCTION & DEVELOPMENT CORPORATION and its president **EULOGIO S. ULANDAY**
Accused.

CTA CRIM CASE NO. O-1061

For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 2 9 2023; 3:00PM

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RESOLUTION

On July 31, 2023, the Court received the ***Return of Warrant of Arrest*** dated July 28, 2023, with attached copy of Warrant of Arrest against Eulogio S. Ulanday, filed by PSMS Gener P. Cruz, Warrant Team Leader of Cainta Municipal Police Station, stating that accused Eulogio S. Ulanday is no longer residing at Km. 21, Ortigas Avenue corner Brookside, Brgy. San Isidro, Cainta, Rizal.

The Court resolves to note the *Return of Warrant of Arrest***.**

At this juncture, the Court takes a second hard look at whether the offense charged against the accused has prescribed.

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.*]

Clear from the foregoing provision that, *first*, the period of prescription for the offense charged is five (5) years.

Second, the prescription period starts to run from the day of the commission of the violation of the law, or if the date of commission is unknown, from the discovery thereof *and* the institution of judicial proceedings for its investigation and punishment.

Third, prescription shall be tolled when proceedings are instituted against the guilty persons.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals* ("*Lim*"),[1] the Supreme Court ruled that the crime of failure to pay tax is *committed* only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period, *viz.*:

> 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,

[1] G.R. Nos. 48134-37, October 18, 1990, 268 PHIL 680-692.

> are well-within the five-year prescriptive period and are not time-barred. [*Emphasis and underscoring supplied.*]

In the instant case, the *Complaint-Affidavit* of Atty. Rowell B. Vicente, Francisco M. Diokno, Leona R. Naguid, and Ramon S. Bautista alleged that the Final Assessment Notice ("**FAN**")/Formal Letter of Demand ("**FLD**") dated **December 11, 2013**, was served on the same date by registered mail to the registered address of accused and by personal service to Kimberly Diag.[2] A reading of the FLD states that she is a project coordinator.[3] It was further alleged that respondent Ulanday Construction & Development Corporation failed to file any valid protest within the time prescribed under Section 228 of the NIRC of 1997, as amended, or until January 10, 2014.[4] Accordingly, the subject FAN/FLD became final and executory ***after*** the lapse of 30 days to file a Protest, or on **January 10, 2014**.[5]

In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, the *Lim* case, as quoted above, is instructive that the filing of the criminal information with the court must fall *within* the five-year prescriptive period.

Further, the Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the *commission* of the offense, if known, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.

In *Lim*, the Supreme Court interpreted Section 354 of the 1939 Tax Code (now Section 281 of the 1997 NIRC) to resolve the issue of prescription. We compare:

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[2] Par. 10 of the Joint Complaint-Affidavit spells it as Kimberly Dia**g**, while Par. 14 of the Joint Complaint-Affidavit spells it as Kimberly Dia**z**.
[3] Docket, p. 50.
[4] Par. 11, Joint Complaint-Affidavit, Docket, p. 20.
[5] SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
... ...
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final**. xxx.

Section 354 of the 1939 Tax Code	**Section 281 of the NIRC of 1997**
SECTION 354. Prescription for Violations of Any Provisions of this Code. – All violations of any provisions of this Code shall prescribe after five 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.	*SECTION 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.

Considering that the wording of Section 354 of the 1939 NIRC was adopted and reproduced in Section 281 of the 1997 NIRC, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in *Lim.*[6]

Thus, pursuant to *Lim*, plaintiff had five (5) years counted from January 11, 2014, or until **January 11, 2019**, to file the *Information* before the Court. The *Information,* dated January 2, 2020, was filed only on April 20, 2023.[7] Clearly, the filing of the *Information* is already time-barred.

In *Romualdez v. Marcelo,*[8] the Supreme Court, citing *People v. Moran,*[9] extensively discussed:

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[6] *People vs. Castillo*, CTA *EB* Crim. Case No. 053 (CTA Crim Case No. O-663) (Resolution), June 8, 2021.
[7] Docket, pp. 5-6.
[8] G.R. Nos. 165510-33 (Resolution), July 28, 2006, 529 PHIL 90-119.
[9] 44 PHIL 387, 405-406 (1932).

> Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; ...that from henceforth[,] he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence[,] it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute, is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."
>
> Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. Prescription emanates from the liberality of the State. ...Any doubt on this matter must be resolved in favor of the grantee thereof, the accused. (*Boldfacing omitted*).

It must be stressed that prescription in criminal cases is a matter of substantive law.[10] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on the said ground.[11]

WHEREFORE, the *Return of Warrant of Arrest* dated July 28, 2023, is **NOTED**.

Finally, premises considered, CTA Crim. Case No. O-1061 is **DISMISSED** on the ground of prescription.

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[10] *Reodica vs. Court of Appeals*, G.R. No. 125066, July 8, 1998, 354 PHIL 90-111.

[11] *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corp.*, G.R. No. 212920, September 16, 2015, 769 PHIL 861-871.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice