REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

FAIVO PASCUAL BARTOLOME,
Accused.

CTA Crim. Case No. **O-984**

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

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

Promulgated:
DEC 04 2023 2:10PM

x - x

RESOLUTION

For the Court's resolution is accused Faivo Pascual Bartolome's (**accused**'s) "Motion to Quash" filed on 18 September 2023[1], with plaintiff People of the Philippines' (**plaintiff**'s) "Comment/Opposition [Re: Motion to Quash dated September 18, 2023]"[2] filed on 13 October 2023.

On 05 December 2022, plaintiff filed an Information dated 25 October 2021.[3] The Information reads:

> ...
> "That on or about December 14, 2016, in Laoag City, Ilocos Norte, and within the jurisdiction of this Honorable Court, accused FAIVO PASCUAL BARTOLOME, owner and proprietor of Dashma Computer Systems and Services, and Ilocostop Convenience Stores, who is engaged in the wholesale and/or retail of electronics, in customer services, and in the operation of convenience stores, with Tax Identification Number 129-864-120-000 and who is required by law , rules and regulations to pay the correct amount of income

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1 Division Docket, pp. 267-273; Received by the Court on 02 October 2023.
2 Id., pp. 275-279.
3 Id., pp. 5-6.

> tax, did then and there knowingly, willfully and unlawfully fail and refuse to pay deficiency income tax in the amount of One Million Ten Thousand Five Hundred Eleven and 39/100 (Php1,010,511.39) Pesos, exclusive of interest and surcharge, for taxable year 2012, despite receipt of Preliminary Assessment Notice with details of discrepancies, on December 14, 2015, and of the Formal Letter of Demand and Final Assessment Notice with details of discrepancies, on January 5, 2016, including prior and post notices and demands to pay, the last of which being the Second Collection letter dated December 14, 2016, and his failure to file a valid protest on the said assessment within the prescribed period, to the damage and prejudice of the Government of the Philippines in the aforesaid amount, exclusive of interest and surcharge."
>
> ...

In the Motion to Quash, accused argues that the criminal action for the alleged offense has already prescribed. He contends further that the Formal Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**) were served on him on 05 January 2016 and the same had become final and executory on 04 February 2016. Considering that five (5) years have already elapsed from such date up to the filing of the Information with the Court on 05 December 2022, accused insists on the quashal thereof because prescription (of the offense) had already set in.[4]

Plaintiff, on the other hand, counters that the reckoning date of the offense's commission should be counted from its last collection letter on 14 December 2016 (or the date of the offense's commission as alleged in the Information). It claims that the filing of its Joint Complaint-Affidavit[5] before the Department of Justice (**DOJ**) on 23 October 2020 interrupted the 5-year prescriptive period. On this theory, plaintiff maintains that the present criminal action may still be validly prosecuted.[6]

We resolve.

After a review of the parties' contrasting arguments, We find for accused.

As accused correctly pointed out and as reflected in the Joint Complaint-Affidavit, he filed a protest to the FLD and FAN on 25 January 2016. Upon his failure to meet the requirements for a valid

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4 Supra at note 1.
5 Division Docket, pp. 18-24.
6 Supra at note 2.

protest, he was given an additional ten (10) days to file another protest. He was only able to file a subsequent protest on 10 March 2016 which was denied for being filed out of time. Thereafter, he received collection letters from the Bureau of Internal Revenue (**BIR**) on 05 August 2016 and 16 December 2016.[7]

Considering the aforementioned dates, the Court must, therefore, first determine when the assessment had actually attained finality. Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, amended, provides:

> ...
> **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 preassessment notice shall not be required in the following cases.
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.
> ...
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[8]
> ...

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7 Supra at note 5.

8 Emphasis supplied.

The above provision contemplates certain scenarios that may occur after the issuance of an assessment: (**1**) the taxpayer fails to file a valid protest within thirty (30) days from its receipt of the assessment; (**2**) the taxpayer files a timely and valid protest and the same is granted; (**3**) the taxpayer files a timely and valid protest and the same is fully or partially denied; and, (**4**) the taxpayer files a timely and valid protest but is not acted upon within 180 days by the Commissioner of Internal Revenue (**CIR**) or his authorized representative to decide on the protest.

The Court finds that the case at bar falls under the first scenario. Section 3.1.4 of Revenue Regulations (**RR**) No. 18-2013[9], further explains the legal effects of a failure to validly file a protest within the prescribed time, to wit:

> ...
>
> **3.1.4 Disputed Assessment.** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.***
>
> ...
>
> **If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**[10]
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> ...

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9 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment issued 28 November 2013.

10 Emphasis supplied and italics in the original text.

As alleged in the Joint Complaint-Affidavit, accused failed to file a valid protest from his receipt of the FLD and FAN on 05 January 2016. Counting thirty (30) days therefrom, the assessment then became final, executory, and demandable on 04 February 2016. The same date would have also been considered as the time when accused had willfully failed or refused to pay his assessed tax deficiencies.

With the date of the offense's commission ascertained, the Court shall now proceed to determine the period within which the Information for the prosecution of the offense should have been filed. Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, 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.[11]
> ...

In relation thereto, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals[12] (**RRCTA**) clearly provides that it is the institution of the criminal action which interrupts the prescriptive period, and that criminal actions before the CTA are instituted by the filing of an Information:

> ...
> 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

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11 Italics in the original text, emphasis and underscoring supplied.

12 A.M. No. 05-11-07-CTA.

> 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.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**[13]
>
> ...

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[14] (**Lim**), the Supreme Court discussed and clarified the prescription of violations of the Tax Code. Therein, the Supreme Court explained:

> ...
>
> 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 wilful 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.
>
> ...

The NIRC of 1997, as amended, clearly states that offenses punishable under the said law prescribe in five (5) years. Both the RRCTA and *Lim* deem that the prescriptive period is tolled by the filing of the criminal action (Information) in court. In other words, in cases of willful failure to pay tax, the criminal action must be filed within five (5) years from the date of the commission of the offense which, in this case, is 04 February 2016. Counting five (5) years therefrom, the last day to file the Information would have been on 04 February 2021 or almost two years *before* the actual filing of the Information on 05 December 2022. With this, it becomes indisputable that the offense charged in this case had already prescribed.

Even assuming for the sake of argument that We consider the date of 14 December 2016 (the date of plaintiff's last collection letter) as the date of the offense's commission, the filing of the Information would still have prescribed as almost six (6) years have already lapsed at the time the Information was filed.

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13 Italics in the original text, emphasis and underscoring supplied.
14 G.R. Nos. L-48134-37, 18 October 1990.

It is also worth to note that although the date of Information is 25 October 2021, prescription is tolled not upon the production of the Information but upon its *filing* in Court. Either way, the action would still be prescribed as the last day for filing the Information was on 04 February 2021, as previously stated.

Considering the above disquisitions, the Court finds no legal ground to sustain plaintiff's objections to accused's present Motion to Quash. Plaintiff's allegation in the Information that the crime's commission was on 05 December 2016 is erroneous and misleading. As it stands, applicable law and jurisprudence all support the quashal of the Information against the accused on the ground that the accused's criminal liability had already been extinguished due to prescription pursuant to Section 3(g)[15], Rule 117 of the Rules of Court, as amended.

WHEREFORE, the foregoing premises considered, accused's "Motion to Quash" filed on 18 September 2023 is hereby **GRANTED.** Accordingly, the Information filed against accused FAIVO PASCUAL BARTOLOME for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, for willful failure or refusal to pay tax is **DISMISSED** on the ground that the offense charged has already prescribed.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[15] **Sec. 3**. *Grounds*. – The accused may move to quash the complaint or information on any of the following grounds:

...

(g) That the criminal action or liability has been extinguished[.] ...