REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**CTA Crim. Case No. O-875** (NPS Docket No. XVI-INV-19H-00294)
-versus-	For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended.
THE PROPERTY FORUM PHILS., INC., Unit 407, Ark Condominium No. 92 Sierra Madre Street Mandaluyong City	Members: **DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
MANUEL M. ALLEJE, - do - (At-Large), *Accused.*	Promulgated: JUN 23 2021 8:15am

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RESOLUTION

On May 18, 2021, an Information was filed with this Court, which reads as follows:

> The undersigned Assistant State Prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses THE PROPERTY FORUM PHILS., INC. and MANUEL M. ALLEJE of willful failure to pay tax under Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:
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>> That on or about September 14, 2017 and thereafter, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused The Property Forum Phils., Inc., a domestic corporation registered with the Securities and Exchange Commission and the Revenue District Office No. 41, Bureau of Internal Revenue, Mandaluyong City, with Tax Identification No. 223-726-658, and its president, accused Manuel M. Alleje, did then and there, willfully, unlawfully and feloniously fail to pay the basic value-added tax deficiencies for taxable year 2011 in the

> amount of Two Million Five Hundred Eighty Four Thousand Two Hundred Eight Seven Pesos and One Centavo (Php2,584,287.01), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Demand Before Suit issued on September 14, 2017, to the damage and prejudice of the government.

A perusal of the Information shows that the same is valid on its face for having satisfied the requisites under Section 6,[1] Rule 110 of the Rules of Court. It is also supported by the prosecutor's resolution; the Commissioner of Internal Revenue's (CIR) letter-referral for preliminary investigation and filing of the appropriate information; joint complaint-affidavit; and, other annexes.

The Information alleges that the amount of Php2,584,287.01 is the deficiency value-added tax (VAT) for taxable year 2011, exclusive of interest, penalty and surcharge, which would vest exclusive original jurisdiction upon this Court.

Upon review of the above-quoted Information, and the accompanying documents, including the Resolution dated November 27, 2019 issued by Assistant State Prosecutor Mary Ann S Parong, and approved by Prosecutor General Benedicto A. Malcontento, it is revealed that the offense subject of the Information has prescribed.

Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, provides for prescription of violations the NIRC, as follows:

> 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

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[1] Rule 110 Prosecution of Offenses
Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

> time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
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> 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.
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> The term of prescription shall not run when the offender is absent from the Philippines.

The prescriptive period may only be tolled for reasons explicitly provided by law. Under Section 281 of the NIRC, as amended, the period of prescription commences to run from the day of the commission of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy.

The Supreme Court clarified that a "case shall be deemed commenced only when it is filed in court"; and, "the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that."[2] The phrase "*the period of prescription shall be suspended when proceedings are instituted against the guilty party*" refers to judicial proceedings as distinguished from administrative proceedings.[3]

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* (*Lim case*),[4] the Supreme Court clarified the point when prescription for criminal violation of the provisions of the NIRC, **involving taxpayer's refusal to pay the deficiency taxes due**, commences, *viz.*:

> 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**

[2] *Luz M. Zaldivia v. Hon. Andres B. Reyes, Jr.*, G.R. No. 102342, July 3, 1992.
[3] *Id.*
[4] G.R. Nos. L-48134-37, October 18, 1990.

> **counted from July 3, 1968 when the final notice and demand was served** on petitioners' daughter-in-law.
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> **We hold for the Government**. Section 51(b) of the Tax Code provides:
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>> (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)
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> 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**. (*Emphasis supplied*)

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, despite service of assessment notices, the date of commission of which is known, the five (5) year prescriptive period commences to run from the date the assessment notices became final and executory and continues to run until the filing of the Information in Court.

Jadewell Parking Systems Corporation v. Hon. Judge Nelson F. Lidua, Sr., et al.,[5] is categorical anent the necessity of filing the Information in court to toll the running of the period of prescription as well as the consequence of failing to seasonably file the Information in court, *viz.*:

> **The failure of the prosecutor to seasonably file the Information is unfortunate as it resulted in the dismissal of the case against the private respondents**. It stands that the doctrine of Zaldivia is applicable to ordinances and their prescription period. **It also upholds the necessity of filing the Information in court to toll the period**. Zaldivia also has this to say concerning the effects of its ruling:

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[5] G.R. No. 169588, October 7, 2013.

> The Court realizes that under the above interpretation, **a crime may prescribe even if the complaint is filed seasonable with the prosecutor's office if, intentionally or not, he delays the institution of the necessary judicial proceedings until it is too late**. However, that possibility should not justify a misreading of the applicable rules beyond their obvious intent as reasonably deduced from their plain language.
>
> The remedy is not a distortion of the meaning of the rules but a rewording thereof to prevent the problem here sought to be corrected. (*Emphases supplied*)

As alleged in the Joint Complaint-Affidavit in the present case, accused was assessed for deficiency taxes for taxable year 2011, with the deficiency VAT in the amount of Php2,584,287.01 being the subject of the instant Information. The assessments were made known to accused through the service of the Preliminary Assessment Notice (PAN) dated October 28, 2015, and Formal Letter of Demand with Assessment Notices (FLD/FAN) dated November 16, 2015. The FLD/FAN was served via registered mail, and personally served on November 23, 2015. It was likewise alleged that accused failed to protest the subject assessments within the time prescribed. *Sans* any protest, said FLD/FAN became final and executory after the lapse of the thirty-day period to protest the same. Thus, with the FLD/FAN having been served on November 23, 2015, the 30-day period ended on December 23, 2015.

Counting five (5) years from December 23, 2015, the five-year prescriptive period lapsed on December 23, 2020. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on May 18, 2021.

There is no reason to deny accused of the benefits accruing from the proper and liberal construction of the prescriptive period for violations of the provisions of the NIRC, as amended. It is well-settled that the law on prescription of crimes must be interpreted in favor of the accused.[6]

The failure of the prosecution to timely file the Information in Court, within the five-year prescriptive period as provided

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[6] *People of the Philippines v. Arturo D. Pacificador*, G.R. No. 139405, March 13, 2001.

under Section 281 of the NIRC, as amended, renders the present case dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription. Likewise on the same ground, the instant Information, docketed as CTA Crim. Case No. O-875, is **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice