REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

AJ CORINTHIAN HAULING CORPORATION,

ARCELI S. SAJONAS
98 Ermin Garcia St.,
Cubao, Quezon City

and

JOHN FITZ JERALD CLAUDIO
7th St., GHQ Village, Signal,
Taguig City

-All At-Large-
Accused.

CTA CRIM. CASE NO. O-1149
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

JUN 25 2024
11:41 a.m.

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RESOLUTION

Records show that on May 27, 2024, the prosecution filed an Information against herein accused for violating Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "'That on or before April 15, 2014, in Taguig City, and within the jurisdiction of this Honorable Court, accused AJ

> Corinthian Hauling Corporation, a domestic corporation, doing business in Taguig City and Arceli S. Sajonas (Manager) and John Fitz Jerald Claudio (Treasurer), did then and there, knowingly, willfully and unlawfully fail to make and file the income tax return for taxable year 2013, thus, resulting to their failure to pay an income tax liability amounting to Two Million, Six-Hundred Seven Thousand, Three Hundred Twenty-Three Pesos and Nineteen Centavos (P2,607,323.19), excluding interest and penalties thereon, which payment is required under the pertinent provisions of the National Internal Revenue Code of 1997, thereby depriving the government of the needed revenues to sustain public service.'
>
> CONTRARY TO LAW."

Pursuant to Section 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, the Court shall determine the existence or non-existence of probable cause. In this respect, "the judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice."[1]

Corollary thereto, the prosecution presented the following supporting documents for examination of the Court:

1. DOJ Resolutions;

2. Investigation Data Form;

3. Referral Letter of BIR Commissioner Kim S. Jacinto-Henares; and

4. Joint Complaint-Affidavit of Jonas P. Punzal, Nelson V. Gonzales, Amelita M. Tugade, and Maxima DC. Mones, with annexes.

After a careful consideration of the allegations in the Information and the personal evaluation of the Resolution of the Department of Justice and its supporting documents, the Court finds that the present case must be dismissed on the basis of prescription.

Section 281 of the 1997 NIRC provides:

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[1] *Alfredo C. Mendoza v. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014, 722 SCRA 647 citing *People v. Castillo and Mejia*, 607 Phil. 754; 590 SCRA 95 (2009).

> 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. *(Emphasis supplied)*

In resolving the issue of prescription of the offense charged, the Court shall consider the following: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; (3) the time the prescriptive period was interrupted.[2]

Sec. 281 of the 1997 NIRC plainly provides that the period of prescription for all criminal tax violations shall be five (5) years. As regards the commencement of the running of such prescriptive period, the same will depend on whether the offense was known at the time it was committed. If known at the time of commission, prescription starts from the said date. Otherwise, prescription begins to run at the time of the discovery of the offense **and** the institution of judicial proceedings for its investigation and punishment.

In *Lim, Sr. v. Court of Appeals*,[3] the Supreme Court provided the following guidance in the application of prescriptive period for criminal tax offenses relevant to the resolution of the present case, to wit:

> "With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of *discovery* of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its

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[2] *Romualdez v. Marcelo,* G.R. Nos. 165510-33, July 28, 2006 citing *Domingo v. Sandiganbayan,* 379 Phil. 708, 717 (2000).
[3] G.R. No. 48134-37, October 18, 1990, 190 SCRA 616 ("*Lim, Sr.*").

resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. **The Solicitor General stresses that Section 354[4] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

But according to the Lim spouses, that argument had precisely been raised, considered, and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:

> 'Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*' (Italics supplied).

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 <u>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</u>.

[4] Now Sec. 281 of the 1997 NIRC.

In the case of *People vs. Tierra*, the same argument came up before the Court but its conclusions on the issue of prescription did not bring us any closer to a categorical ruling. It opined:

> 'Evidence was adduced to show, and the trial court so found, that the falsity of the returns filed by the appellant and his failure to preserve his books of accounts for at least five years from the date of the last entry in each book were all discovered only on December 16, 1950. Since the informations were filed on December 12, 1955, the trial court correctly ruled that the actions were all within the five-year period of limitation.
>
> 'Appellant argues, however, that since the informations make no allegation that the offenses were not known at the time of the commission as to bring them within the exception to the statute of limitations, then the informations were necessarily defective for that reason, and this fatal defect cannot be cured by the introduction of evidence. Prescription is a matter of defense and the information does not need to anticipate and meet it. The defendant could, at most, object to the introduction of evidence to defeat his claim of prescription; but he did not. *Anyway, the law says that prescription begins to run from . . . 'the institution of judicial proceedings for its . . . punishment.'* (Italics supplied).
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> Unless amended by the Legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[5]

As regards the tolling of the running of the prescriptive period, the Supreme Cour in *Lim, Sr.* also provided that the same shall be interrupted upon the filing of the information in court. Notably, this ruling is in congruence with Sec. 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) which states:

> 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**

[5] Emphasis and underscoring supplied; Citations omitted.

> **the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other 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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription.** *(Emphasis supplied)*

As borne out by the records, the Referral Letter of former BIR Commissioner Kim S. Jacinto-Henares as well as the Complaint-Affidavit executed by Jonas P. Punzal, Nelson V. Gonzales, Amelita M. Tugade, and Maxima DC. Mones charging the accused of the offense charged, among others, were filed before the Department of Justice (DOJ) on **June 29, 2016**. Counting five (5) years from said date, the prosecution had until **June 29, 2021** within which to institute the necessary criminal action. Accordingly, the filing of the Information on **May 27, 2024** is already time-barred.

WHEREFORE, Criminal Case No. O-1149 is **DISMISSED** for lack of jurisdiction and/or on the ground of prescription.

SO ORDERED.

Ma. Belen S.L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice