REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-1118** (NPS Docket No. XVI-INV-19G-00245)
	For Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended.
- versus -	
COLDSUN MULTI-SALES COMPANY, ROMNICK PATOC and RODRIGO CAMPUED, (All At-Large; No. 446, C.M. Recto Avenue, Tondo, Manila), *Accused.*	Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
	Promulgated: MAR 01 2024 10:10 a.m.

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RESOLUTION

On October 4, 2023, an Information was filed with this Court, charging accused Coldsun Multi-Sales Company, its general manager, Romnick Patoc, and partner, Rodrigo Campued, of violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997 (NIRC), as amended.

In a *Resolution* promulgated on November 21, 2023, the Court dismissed the Information docketed as CTA Crim. Case No. O-1118 due to prescription of the offense charged.

On January 24, 2024, a *Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 21 November 2023)* was filed by Special Prosecutors from the Legal Division of the Bureau of Internal Revenue (BIR), Revenue Region No. 6, praying that the (a) aforementioned *Resolution* be set aside and a new one be issued finding probable cause to issue warrant of arrest; (b) case be set for trial; and (c) entry of appearance be noted.

Invoking the case of *People of the Philippines v. Mateo A. Lee, Jr.*[1], which held that the filing of complaint with the Office of the City Prosecutor tolls the running of the prescriptive period, it was argued in the *Motion* that when the complaint was filed with the Department of Justice (DOJ) on July 9, 2019, the criminal action was instituted within the five (5) year prescriptive period.

We resolve.

As to the filing of the *Motion*, the Court noted that there was no written deputization attached to the *Motion* which would show the authority of the BIR Special Prosecutors to file the said *Motion* and to prosecute the instant criminal action.

Section 5, Rule 110 of the Revised Rules of Criminal Procedure, as amended, provides:

> Section 5. Who must prosecute criminal action. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, **the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court**. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. (Emphasis Supplied)

Relative thereto, Section 17 of Republic Act No. 10071, otherwise known as the Prosecution Service Act of 2010, renamed the position title Chief State Prosecutor to Prosecutor General, to wit:

> Section 17. Continuation in Office of Prosecutors. - Upon approval of this Act, the prosecuting officers, including the prosecution attorneys, in the present prosecution staff shall continue in office to discharge the functions under this Act, and the **position titles Chief State Prosecutor** and Assistant Chief State Prosecutor **are respectively renamed Prosecutor General** and Senior Deputy State Prosecutor. All prosecutors who have the ranks of Prosecutor III and Prosecutor II in the existing prosecution staff

[1] G.R. No. 234618, September 16, 2019.

> shall be called Senior Assistant State Prosecutors and Assistant State Prosecutors, respectively, under this Act. (Emphasis Supplied)

Based on the foregoing, criminal actions are required to be prosecuted under the direction and control of a public prosecutor. Nevertheless, if **authorized in writing** by the Prosecutor General, a private prosecutor may prosecute a criminal action up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

Also, Section 3, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, specifically allows the prosecution of criminal action by **duly deputized** legal officers of the BIR, among others, thus:

> Section 3. Prosecution of Criminal Actions. – All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor. **In criminal actions involving violation of the National Internal Revenue Code** or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, **the prosecution may be conducted by their respective deputized legal officers**. (Emphasis Supplied)

In view of the filing of the *Motion* by the BIR Special Prosecutors without any accompanying written deputization from the DOJ, the Court considers the *Motion* as not duly filed.

Further, even assuming that the *Motion* was duly filed, said *Motion* still lacks merit.

First, the case cited in the *Motion* is not even similar to the criminal action subject of the Information filed before this Court. In *Mateo Lee*, the accused was charged with violation of Republic Act (R.A.) No. 7877[2], a special law not involving tax. *Second*, a perusal of R.A. No. 7877 shows that it does not contain any provision relative to prescription for violations thereof, unlike the NIRC which specifically provides a provision regarding prescription for violations thereof, *viz*:

> 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 date of the commission of the violation of the law**, and **if the same be**

[2] Anti-Sexual Harassment Act of 1995.

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 offended is absent from the Philippines. (*Emphasis Supplied*)

Verily, the prescription for violations of the NIRC starts to run either from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

With respect to interruption of the prescriptive period, Section 2, Rule 9 of the RRCTA, is clear that the prescriptive period is interrupted only upon filing of the information in court, to wit:

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 action 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.

The institution of the criminal action shall interrupt the running of the period of prescription. (*Emphasis Supplied*)

In this case, the Information involves the offense of failure to pay tax deficiency despite prior notices. In *Tupaz v. Ulep*[3], it was held that the offense of failure to pay deficiency tax despite demand is committed after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.

To reiterate, the Formal Letter of Demand in this case was alleged to have been received by the accused on December 14, 2016. Since no protest was filed within the period of thirty (30) days from December 14, 2016, the assessment became final and executory on

[3] G.R. No. 127777, October 1, 1999.

January 13, 2017. Thus, the plaintiff had five (5) years from January 13, 2017, or until January 13, 2022, within which to file the Information before this Court.

Accordingly, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on October 4, 2023.

WHEREFORE, the *Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 21 November 2023)* filed on January 24, 2024 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice