REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**CTA Crim. Case No. O-957** (NPS Docket No. XVI-INV-12G-00346) Violation of Section 254 of the National Internal Revenue Code of 1997, as amended
-versus-	Members: **DEL ROSARIO**, *P.J., Chairperson*, **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
ZIEGFRIED LOO TIAN, (No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo Manila), *Accused.*	Promulgated: DEC 15 2022 11:32 AM.

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RESOLUTION

On October 26, 2022, an Information was filed with this Court, charging accused Ziegfried Loo Tian for violation of Section 254 of the National Internal Revenue Code of 1997, as amended, allegedly committed as follows:

> "That on or before January 20, 2012, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, required by law to file his Quarterly Value-Added Tax Return (VAT return), did, then and there, willfully, unlawfully and feloniously attempt to evade and defeat payment of VAT for the fourth (4th) quarter of taxable year 2011, by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which resulted to deficiency tax in the amount of Three Million Five Hundred Fifty Four Thousand Three Hundred Thirteen Pesos and Eighty Centavos (Php3,554,313.80), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines."
>
> CONTRARY TO LAW.

A perusal of the Information shows that it is valid on its face for having satisfied the requisites under Section 6, Rule 110 of the Rules of Court.[1] It is also supported by the certified true copies of the prosecutor's Resolutions dated May 11, 2017 and September 1, 2014, respectively; National Prosecution Service Investigation Data Form dated July 5, 2012; Referral Letter dated July 5, 2012 by then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares; and the Joint Complaint-Affidavit with supporting documents.

However, the records also clearly show that the instant Information should already be dismissed on the ground of prescription.

> 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 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.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* (*Lim* case),[2] the Supreme Court interpreted the commencement of the prescriptive period under Section 354 of the Tax Code (now, Section 281). The Supreme Court explained:

> ...The Solicitor General stresses that Section 354 speaks not only of the 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 punishment." In other words, in addition to the fact of

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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.

[2] G.R. No. L-48134-37, October 18, 1990.

> 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 1971 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.
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> xxx xxx xxx
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> ...As Section 354 stands in the statute book (and to this day has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as <u>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>.
>
> xxx xxx xxx
>
> 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 strict construction in favor of the government and limitations in such cases will not be presumed in the absence of clear legislation. (*Underscoring supplied*)

The Supreme Court stated that the offenses are "practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, <u>up to the filing of the information in court</u> does not exceed five (5) years."

Conversely, it can be concluded from the Supreme Court's statement in the *Lim* case that if the period from the institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file an action has prescribed. This is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, which provides:

> SEC. 2. *Institution of criminal actions.* – <u>All criminal actions before the Court in Division</u> in the exercise of its original jurisdiction <u>shall be instituted by the filing of an information</u> in 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.
>
> The institution of the criminal action shall interrupt the running of the period of prescription. (*Underscoring supplied*)

In this case, the records show that on July 5, 2012, the CIR referred the Joint Complaint-Affidavit of Revenue Officers Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco and Adelina P. See for preliminary investigation with the Department of Justice (DOJ).

Counting five (5) years from July 5, 2012, the prescriptive period to institute the criminal action lapsed on July 5, 2017. Unfortunately, the instant Information, despite being dated September 1, 2014, was filed with the CTA only on October 26, 2022, which is clearly beyond the five (5)-year prescriptive period. Thus, the dismissal of the instant case is warranted.

Based on the foregoing, there is no probable cause to issue a warrant of arrest against accused Ziegfried Loo Tian.

WHEREFORE, the instant CTA Criminal Case No. O-957 is **DISMISSED** due to prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice