CTA Form No. 8 (For DCC)

16-000332-0017

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-596

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GENESIS CAR CARE & SERVICE STATION, INC., Represented by Ms. CORAZON L. TENG (VICE PRESIDENT/TREASURER) c/o GENESIS CAR CARE & SERVICE STATION, INC.,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROSECUTOR NIVEN R. CANLAPAN
Department of Justice
Padre Faura, Ermita, Manila

ATTY. JOSHUA Y. BAGOTSAY
ATTY. CICERO D. CLARO
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, Room 516, 5th Floor, (Roof Deck), Fishermall
Fernando Poe Jr. Avenue corner Quezon Avenue
Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 20, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 21, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

GENESIS CAR CARE & SERVICE STATION, INC., Represented by Ms. CORAZON L. TENG (VICE PRESIDENT/TREASURER) c/o GENESIS CAR CARE & SERVICE STATION, INC.,
Accused.

CTA Crim. Case No. O-596

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

Promulgated:

MAY 2 0 2024, 10:00AM

x- -x

RESOLUTION

For resolution of this Court is the plaintiff's ***Motion for Reconsideration*** filed on April 1, 2024.

The plaintiff's *Motion for Reconsideration* assails the Court's *Resolution* (assailed *Resolution*), dated February 6, 2024, dismissing the case on the ground of prescription. It argues that prescription has not set in and that the institution of a criminal action before the Department of Justice (DOJ) for purposes of preliminary investigation effectively tolls the running of the prescriptive period.

At the outset, We note that the instant *Motion for Reconsideration* was filed out of time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SECTION 1. Who may and when to file motion. — **Any aggrieved party may seek a reconsideration** or new trial of any decision, resolution, or order of the Court **by filing a motion for reconsideration** or new trial **<u>within fifteen days</u>** from the date of receipt of notice of the decision, resolution or order of the Court in question." [*Emphasis supplied*]

The rule is and has been that the period for filing a motion for reconsideration is non-extendible. [1] If no motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.[2]

Records reveal the following dates of receipt of the assailed *Resolution*: **<u>February 12, 2024</u>**, by the Bureau of Internal Revenue, National Bureau of Investigation, and **Department of Justice**; <u>February 13, 2024,</u> by the Chief of the Philippine National Police through the Criminal Investigation and Detection Group; and on <u>February 14, 2024,</u> by the Chief Warrant Section of the Quezon City Police Department.

Counting fifteen (15) days from February 12, 2024, the date the Department of Justice received the assailed Resolution, the plaintiff only had until **February 27, 2024** to file its Motion for Reconsideration. It only filed the instant *Motion for Reconsideration* on April 1, 2024. Hence, We rule that the Motion was belatedly filed and should be dismissed outright.

Even if the *Motion for Reconsideration* is timely filed, it is still dismissible for lack of merit.

We quote Section 281 of the NIRC of 1997, as amended:

> *SEC. 281. Prescription for Violations of any Provision of this Code.* - **<u>All violations of any provision of this Code shall prescribe after five (5) years</u>**.
>
> 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, **<u>from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.</u>**
>
> 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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[1] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.
[2] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.

> The term of prescription shall not run when the offender is absent from the Philippines. [*Emphasis supplied*]

As We have stated in the assailed *Resolution*, the interpretation of this provision has been settled in the landmark case of *Lim*[3] to wit:

> 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 and underscoring supplied.*]

We cannot depart from this interpretation of the Supreme Court of Section 354 of the 1939 Tax Code as recodified in Section 281 of the NIRC of 1997, for the principle of *stare decisis* requires that once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner.[4]

We quote the assailed *Resolution*:

> As alleged in the *Joint Complaint-Affidavit*[5] filed by the revenue officers of the Bureau of Internal Revenue, the Final Assessment Notice (**FAN**) was sent to accused through registered mail on October 5, 2007. Under prevailing regulations, service of the FAN may be made through registered mail, and there is created a disputable presumption that such assessment notice was received by the addressee in the regular course of the mail.
>
> The estimated turnaround time for such registered mail to be delivered is seven (7) working days. Even if the Court assumes that the accused received the FAN thirty (30) days from its mailing, or on November 4, 2007, and no protest was filed within thirty (30) days from such date, the assessment would have become final on **December 5, 2007**.

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[3] G.R. Nos. 48134-37, 18 October 1990, 268 SCRA 680-692.
[4] *University of the East v. Masangkay*, G.R. No. 226727, 25 April 2018.
[5] Docket, pp. 18-23.

> In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, *Lim,* as quoted above, is instructive that the filing of the criminal information must fall within the five-year prescriptive period.
>
> The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.
>
> ...
>
> Thus, pursuant to *Lim,* plaintiff had five (5) years counted from December 5, 2007, or until **December 5, 2012,** to file the *Information* before the Court. The *Information* dated December 21, 2015 was filed with this Court only on **July 29, 2016**.
>
> Clearly, when the present Information was filed on **July 29, 2016**, the government's right to institute a criminal action against accused had already prescribed for *more than three (3) years.*
>
> Even if the period is counted from the issuance of the Preliminary Collection Notice, plaintiff would have five (5) years from July 29, 2010, or until **July 29, 2015**, to file the *Information* in Court. Hence, the filing of the *Information* on **July 29, 2016,** is one (1) year beyond the prescriptive period. [*Citations omitted.*]

As such, We find no merit in reversing the assailed Resolution.

WHEREFORE, premises considered, the plaintiff's *Motion for Reconsideration* is **DENIED** for being filed out of time and for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice