24-000178-0003

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1137

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SKI CONSTRUCTION GROUP, INC., CLAUDIO B. ALTURA, ALBERT ALTURA AND CORNELIO V. CAEDO,

17th Floor Philamlife Tower, Paseo de Roxas, Makati City

Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENO
ASST. STATE PROSECUTOR ARLIE ALILAM-RAMOS
Department of Justice
Padre Faura Street, Ermita,
1000 Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Legal Division, Bureau of Internal Revenue
Regional Office Building
No. 313 Sen. Gil J. Puyat Avenue
Makati City

GREETINGS:

You are hereby notified by these presents that on **April 24, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 25, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SKI CONSTRUCTION GROUP, INC., CLAUDIO B. ALTURA, ALBERT ALTURA, and CORNELIO V. CAEDO,

17th Floor Philamlife Tower, Paseo de Roxas, Makati City
Accused.

CTA CRIM. CASE NO. O-1137
(I.S. No. XVI-INV-18B-00040)
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended

Members:

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

Promulgated:

APR 24 2024; 1:55PM

x- -x

RESOLUTION

On April 5, 2024, the prosecution filed an Information charging accused **SKI Construction Group, Inc., Claudio B. Altura, Albert Altura,** and **Cornelio V. Caedo** for willful failure to pay tax under 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 about February 13, 2014, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused SKI Construction Group, Inc., a domestic corporation, and accused Claudio B. Altura (Chairman/Director), Albert Altura (President/Director) and Cornelio V. Caedo (Treasurer/Director), responsible officers of SKI Construction Group, Inc., did then and there, willfully, unlawfully, and feloniously fail to pay deficiency value-added tax in the amount of **₱11,190,557.20** (excluding charges and penalties), despite due assessment, notice and demand, which payment is required by the pertinent provisions of the NIRC of 1997, as amended, thereby depriving the government of the needed revenues to sustain public service.

CONTRARY TO LAW.

In support thereof, the following documents were attached to the Information:

1. Resolution dated January 30, 2019, issued by Assistant State Prosecutor Arlie Alilam Ramos, recommending that accused be charged for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended;

2. Department of Justice (DOJ) National Prosecution Service Investigation Data Form dated February 15, 2018;

3. Authority and approval for the filing and institution of criminal action against the accused issued by the Commissioner of Internal Revenue dated February 15, 2018; and

4. Joint Complaint-Affidavit of Revenue Officers Ricaredo O. Balderas, Edmond M. Caluag, Amiel Bryan J. Bautista and Titus G. Ragracias dated February 15, 2018, with the following attachments:

    a. General Information Sheet of Ski Construction Group, Inc. for the year 2011;
    b. Letter of Authority dated February 16, 2012;
    c. First Notice for Presentation of Records dated February 28, 2012;
    d. Second Request for Presentation of Books of Accounts dated March 15, 2012;
    e. Final Notice Before Issuance of *Subpoena Duces Tecum* Seizure dated April 12, 2012;
    f. Notice of Informal Conference dated January 7, 2013;
    g. Preliminary Assessment Notice dated November 7, 2013;
    h. Formal Assessment Notice dated January 13, 2014;
    i. Preliminary Collection Letter dated April 3, 2014;
    j. Final Notice Before Seizure dated May 20, 2014; and
    k. Warrant of Distraint and/or Levy (undated)

Notably, while the Information did not state the taxable year (TY) involved, a perusal of the above documents shows that the accused allegedly committed the offense of willful failure to pay tax in TY 2010.

After a judicious review of the records filed by the State Prosecutor, the Court finds sufficient basis to dismiss the case.

Section 281 of the NIRC of 1997, as amended (Tax Code), governs the prescriptive period for violations of *any* provision of the Tax Code, to wit:

> 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*)

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode*: From the *day of the commission* of the violation of the law; or

2. *Second Mode*: When the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

The Supreme Court in *Lim, Sr. v. Court of Appeals, et al.* (*Lim*),[1] interpreted the manner of computation of the five-year prescriptive period under Section 354 (now Section 281) of the Tax Code as follows:

> **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*)

[1] G.R. Nos. L-48134-37, October 18, 1990.

It is explained in *Lim* that the offense of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "when proceedings are instituted against the guilty persons." This is declared in *Lim* as the time when the **information is filed with the Court.**[2]

Consistent with prevailing jurisprudence, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that it is the filing of an information with the Court that interrupts the prescriptive period for violations of the Tax Code:

> 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 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.** (*Emphasis supplied*)

Thus, if the offense charged is punishable by the NIRC and other laws enforced by the Bureau of Internal Revenue, the filing of the information in Court interrupts the period of prescription.

In this case, plaintiff alleged that the Final Assessment Notice (FAN) dated January 13, 2014, was personally served to the accused corporation through one Doan Miranda on an even date.[3] Due to the accused's failure to file a protest to the FAN

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[2] In *Lim*, the Supreme Court held that "[a]s Section 354 [now Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that 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.

[3] Joint Complaint-Affidavit, par. 10.

within 30 days from its receipt, the FAN became final, executory, unappealable and demandable[4] on **February 13, 2014**. Consequently, plaintiff pursued collection efforts against the accused[5] but bore no results.[6]

Taking the Tax Code, *Lim*, and the RRCTA together, plaintiff had five (5) years from February 13, 2014, or **until February 13, 2019**, to file an information in Court.

Since no information was filed in Court on or before February 13, 2019, the prescriptive period has not been interrupted. As such, when the present Information was filed with this Court on **April 5, 2024**, the government's right to institute a criminal action had already prescribed for more than **five (5) years**.

WHEREFORE, premises considered, the Information filed on April 5, 2024 is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[4] *Id.*, par. 11.
[5] *Id.*, pars. 12-14.
[6] *Id.*, par. 15.