REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-982

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MATTEN TECHONOLOGIES INC., (Purok 1, San Isidro, Cabuyao, Laguna), JOSEPHINE TIONGCO (Ridgeview Estate, Canlubang, Laguna), and WIVINA ILAGAN (1004 Rizal Blvd., Sta Rosa, Laguna),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR EVEE EUNICE P. DE KEYSER
Department of Justice Padre Faura Street Ermita, Manila 1000

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **February 21, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 23, 2023.**

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,*	**CTA Crim. Case No. O-982** (NPS Docket No. XVI-INV-19F-00212) For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	**Members:**
MATTEN TECHNOLOGIES INC., (Purok 1, San Isidro, Cabuyao, Laguna), **JOSEPHINE TIONGCO** (Ridgeview Estate, Canlubang, Laguna), **and WIVINA ILAGAN** (1004 Rizal Blvd., Pooc, Sta. Rosa, Laguna), *Accused.*	**DEL ROSARIO,** ***PJ, Chairperson,*** **MANAHAN, and REYES-FAJARDO** ***JJ.*** Promulgated: FEB 21 2023 ; 9:57 AM

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RESOLUTION

On December 5, 2022, an Information was filed against accused **MATTEN TECHNOLOGIES INC., JOSEPHINE TIONGCO** and **WIVINA ILAGAN** indicting them of violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended. The accusatory portion of which states:

> That on or about August 10, 2015 and thereafter, in San Pablo City and within the jurisdiction of this Honorable Court, the accused MATTEN TECHNOLOGIES, INC., a domestic business entity, and accused JOSEPHINE TIONGCO and WIVINA ILAGAN, its president and treasurer, respectively, required by law to pay the income tax, did then and there willfully, unlawfully and feloniously fail to pay the deficiency income tax for the taxable year 2010 in the amount of Eighteen Million Five Hundred Fifteen Thousand Seven Hundred Twenty Eight and Sixty Six Centavos (P18,515,728.66), exclusive of surcharge and interest, despite due notices and demands to pay, the latest being in the nature of Final Notice Before Seizure dated August 10, 2015 issued by the Bureau

of Internal Revenue, to the damage and prejudice of the government.

CONTRARY TO LAW.

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

1. Resolution dated March 4, 2020 issued by Assistant State Prosecutor Evee Eunice P. De Keyser, recommending that Matten Technologies Inc., Josephine Tiongco and Wivina Ilagan be charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended;

2. A letter of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Matten Technologies Inc., Josephine Tiongco and Wivina Ilagan; and

3. Joint Complaint Affidavit (JCA) of Agnes R. Ayala, Estrella P. Gonzales and Marilyn B. Buendicho dated June 6, 2019, and filed with the DOJ on even date, with the following attachments:

a. Letter of Authority dated September 6, 2011;[1]
b. First Request for Presentation of Records dated September 7, 2011;[2]
c. First Request for Presentation of Records dated September 20, 2011;[3]
d. Second and Final Notice for Presentation of Records dated October 26, 2011;[4]
e. Subpoena Duces Tecum;[5]
f. Notice for Informal Conference dated October 9, 2012;[6]
g. Notice of Informal Conference (Amended) dated April 10, 2013;[7]
h. Notice of Informal Conference (Amended) dated July 25, 2013;[8]

1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annex "D," JCA.
5 Annex "E," JCA.
6 Annex "F," JCA.
7 Annex "F-1," JCA.
8 Annex "F-2," JCA.

i. Preliminary Assessment Notice;[9]
j. Details of Discrepancies;[10]
k. Registry Return Receipt;[11]
l. Letter of Protest dated December 13, 2013;[12]
m. Letter to Matten Technologies;[13]
n. Formal Letter of Demand dated December 17, 2013;[14]
o. Details of Discrepancies;[15]
p. Preliminary Collection Notice dated June 22, 2015;[16]
q. Final Decision on Disputed Assessment;[17]
r. Preliminary Collection Notice dated June 22, 2015;[18]
s. Final Notice Before Seizure dated August 10, 2015;[19]
t. Warrant of Distraint and/or Levy;[20]
u. BIR Payment Slip dated June 28, 2017;[21]
v. BIR Form No. 0605;[22]
w. BIR Payment Slip dated September 20, 2017;[23] and
x. BIR Form No. 0605.[24]

OUR RULING

This case merits outright dismissal.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[25]

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9 Annex "G," JCA.
10 Annex "G-1," JCA.
11 Annex "G-2," JCA.
12 Annex "H," JCA.
13 Annex "I," JCA.
14 Annex "J," JCA.
15 Annex "J-1," JCA.
16 Annex "K," JCA.
17 Annex "L," JCA.
18 Annex "M," JCA.
19 Annex "N," JCA.
20 Annex "O," JCA.
21 Annex "P," JCA.
22 Annex "P-1," JCA.
23 Annex "Q," JCA.
24 Annex "Q-1," JCA.
25 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Jurisprudence[26] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

> **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.
>
> xxx xxx xxx

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[27]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.,* interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

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26 *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[26].

27 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.,* G.R. No. 135715, April 13, 2011.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals,*[28] accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> 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 wilful refusal to pay the taxes due within the alloted 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.**
>
> xxx xxx xxx[29]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[30] case. There, accused was charged as an officer of El Oro Engravers Corporation for willful failure to pay corporate IT for TY 1979. Among the defenses she posed is that said offense had prescribed. The Supreme Court ruled in the negative, ratiocinating in this wise:

> .... Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals,* we stated that by its nature the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. **As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with**

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28 *G.R.* No. L-48134-37, October 18, 1990.
29 Boldfacing supplied.
30 G.R. No. 127777, October 1, 1999.

> **the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period.**
>
> xxx xxx xxx[31]

Indeed, the *Lim* case and the *Tupaz* case were in unison in holding that the offense of willful failure to pay tax is *committed* upon finality of the assessment, coupled with the taxpayer's deliberate refusal to pay taxes due. However, these cases differ as to when interruption of the five (5)-year prescriptive period under Section 281 of the NIRC, as amended occurs. In the *Lim* case, the prescriptive period was interrupted by the filing of Information in court, whereas in the *Tupaz* case, said prescriptive period was interrupted by the filing of the Complaint before the DOJ for preliminary investigation.

On November 22, 2005, 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 the institution of the criminal action shall interrupt the running of the period of prescription, 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 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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied).

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.

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31 Citations omitted. Boldfacing supplied.

As claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) dated December 17, 2013 covering the taxable year 2010 was received by accused on January 10, 2014. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on February 10, 2014.

Counting from February 10, 2014, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on February 10, 2019. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on December 5, 2022.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-982, is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice