REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-833** (NPS Docket No. XVI-INV-17I-00269) For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended, in relation to Sections 253(d) and 256 thereof
-versus-	Members:
MTO INTERNATIONAL PRODUCT MOBILIZER, INC., AND EDMUNDO T. ONGSIAKO JR., No. 88 New York Street corner Cambridge Street, Cubao, Quezon City (At Large) *Accused.*	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.* Promulgated: AUG 02 2024 1:30 p.m.

x---x

RESOLUTION

Accused MTO International Product Mobilizer, Inc. and Edmundo T. Ongsiako Jr. are charged for violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended, in relation to Sections 253(d) and 256 thereof. The pertinent portion of the *Information* is quoted below:

> "That on or about 11 June 2014 and thereafter, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused MTO INTERNATIONAL PRODUCT MOBILIZER, INC., a duly registered corporation required by law, rules and regulations to file tax returns and pay internal revenue taxes, and accused EDMUNDO T. ONGSIAKO JR., its President and responsible corporate officer, with registered business address at No. 88 New York Street corner Cambridge Street, Cubao, Quezon City, accused having filed its internal revenue tax for the taxable year 2010, and after a thorough examination and audit by the Bureau of Internal Revenue (BIR), it has been found that there is due and collectible from accused MTO INTERNATIONAL PRODUCT

> MOBILIZER, INC., the deficiency income tax in the amount of Php1,935,999.64 for the taxable year 2010, exclusive of interests, did then and there willfully, unlawfully and feloniously fail and refuse to pay said deficiency income tax for the taxable year 2010, without formally protesting against or appealing the same, and despite due assessment, including post and prior notices and formal demand to pay, the latest being in the nature of final notice issued by the BIR on 11 June 2014, to the damage of the Republic of the Philippines in the aforesaid amount of Php1,935,999.64, exclusive of interest."
>
> CONTRARY TO LAW.

In a *Resolution* dated August 27, 2020[1], the Court found the existence of probable cause to hold the accused for trial and ordered the issuance of a *Warrant of Arrest* against accused Edmundo T. Ongsiako, Jr. The said *Warrant* was issued on September 15, 2020[2].

Subsequently, on October 29, 2020, a *Return of Warrant of Arrest* was submitted to the Court stating that the subject of the said *Warrant* cannot be located or found in the given address[3]. The same was noted by the Court in a *Resolution* dated November 26, 2020[4]. An *Alias Warrant of Arrest* was then issued on December 11, 2020[5].

On June 17, 2022, the Court issued a *Resolution* archiving the case. The said *Resolution* is hereunder quoted, as follows:

> Records show that to date, accused EDMUNDO T. ONGSIAKO JR. remains at-large, and in order that this case will not remain pending in the Court's docket for an indefinite period of time, let the case against accused EDMUNDO T. ONGSIAKO JR. be **ARCHIVED**, without prejudice to its revival upon the arrest of the accused.
>
> Let a copy of this Resolution be furnished the Commissioner of Internal Revenue who is directed to exert diligent efforts to ascertain the whereabouts of the accused for his early apprehension. The Public Prosecutor is hereby ordered to coordinate with the Commissioner of Internal Revenue in this regard.
>
> **SO ORDERED.**

Meanwhile, the number of criminal cases archived due to the failure of authorities to cause the arrest of the accused, together with the successive dismissal of recent cases on the ground of prescription, prompted this Court to review the archived cases to determine whether

---

[1] Division Docket, pp. 64 to 65.
[2] Division Docket, p. 66.
[3] Division Docket, p. 68.
[4] Division Docket, pp. 72 to 73.
[5] Division Docket, p. 74.

they were filed within the prescriptive period provided under Section 281 of the NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

Section 281 of the NIRC, as amended, provides the period of prescription for violations of any provision of the NIRC, *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 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).

Further, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the institution of criminal actions shall interrupt the running of the period of prescription, *to wit:*

> Section 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 Republic 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 criminal actions shall interrupt the running of the period of prescription**. (Emphasis supplied)

Pursuant to the foregoing provisions, all violations of any provision of NIRC shall prescribe after five (5) years and such period shall begin to run from the date of the commission of the violation of the law. Meanwhile, only the institution of criminal actions shall interrupt the running of the 5-year prescriptive period.

Based on the allegations in the *Information*, together with the *Joint-Complaint Affidavit* dated September 28, 2017 and its supporting documents, the Formal Letter of Demand (FLD), with attached Details of Discrepancies and Assessment Notices, was issued on January 7, 2014[6] and received by the accused's authorized representative on even date[7]. The said tax assessment became final, executory and demandable after the lapse of thirty (30) days from receipt or on February 7, 2014, for failure of the accused to file a valid protest against it. Accordingly, the cause of action of the Bureau of Internal Revenue (BIR) accrued on February 7, 2014. It is also noted that the FLD indicates that the due date for payment is on February 07, 2014.

As the offense of failure to pay tax under Section 255 of the NIRC, as amended, was committed on February 7, 2014, plaintiff had five (5) years from the said date or until **February 7, 2019** within which to file the *Information* in Court. In this case, the *Information* was filed on **July 22, 2020**.

Considering that the five (5) year prescriptive period commenced when the FLD became final, executory and demandable on February 7, 2014, and that the prescriptive period to institute the criminal action lapsed on February 7, 2019, the subject *Information* filed on July 22, 2020 was clearly beyond the five (5) year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-833 is hereby **WITHDRAWN** from the archives and **DISMISSED** due to prescription of the offense charged. Let the *Warrant of Arrest* issued against accused be **RECALLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(On leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

---

[6] Annex "J", *Joint Complaint Affidavit* dated September 28, 2017.
[7] Division Docket, par. 12 of the *Joint Complaint-Affidavit* dated September 28, 2017, p. 18.