REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus-

CHIATSING CARDBOARD CORP. represented by SZE KOU FOR, IMELDA TAÑEDA SZE and TERESITA NG,
Accused.

CTA Crim. Case Nos. O-385, O-386, O-387, O-388, O-389, O-390, O-391 and O-392
For: Violation of Sections 254 and 255 of the NIRC of 1997, as amended

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

JUL 08 2015 8:45 a.m.

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RESOLUTION

For resolution is the accused's *Motion to Quash* filed on April 8, 2015 with prosecution's *Comment/Opposition (To Accused's Motion to Quash)* filed on May 15, 2015.

Accused move to quash the Amended Informations in the above-captioned cases based on the following grounds:

1. There is double jeopardy because the various Amended Informations against the accused charges them with multiple offenses arising from the same act and flowing from the same criminal intent.

2. The offenses of "Attempt to Evade or Defeat Tax" under Section 254 of the National Internal Revenue Code (NIRC) of 1997 as alleged in the Amended Information in CTA Criminal Case Nos. O-385, O-387, O-389 and O-391 and "Failure to Supply Correct and Accurate Information" under Section 255 of the NIRC of 1997 as alleged in the Amended Information in CTA Criminal Case Nos. O-386, O-388, O-390 and O-392 have already been extinguished by prescription.

On the other hand, the prosecution counter-argues that there is no double jeopardy. Sections 254 and 255of the NIRC of 1997 are separate and distinct offenses. There are different modes of committing Sections 254 and 255 of the NIRC of 1997 and the two offenses have different constitutive elements. Prosecution for the two offenses may be made simultaneously and independently. Moreover, the period to file the criminal action for taxable years 1999 and 2000 has not yet prescribed. The instant case was duly initiated by the filing of the complaint with the Department of Justice (DOJ) on May 26, 2005, which effectively interrupted the prescriptive period.

The Court deems it necessary to resolve first the issue on prescription before we resolve the other issue.

Accused argue that the prescriptive period should be reckoned on May 26, 2005, the day when the Joint Affidavit of the revenue officers were referred to the DOJ for preliminary investigation, hence, counting five years therefrom, the prescriptive period had lapsed on May 26, 2010. However, the Original Informations were only filed with the Court on April 23, 2014.

The Court finds that the criminal action was filed beyond the five-year prescriptive period.

Section 281 of the NIRC of 1997, as amended, provides:

> "SECTION 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*)

In the case of ***Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines***[1] the Supreme Court, interpreting the above-quoted provision (previously Section 354 of the NIRC), ruled that 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

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

information in court does not exceed five (5) years, the government's right to file an action will not prescribe. The Supreme Court ruled as follows:

> "...As Section 354 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.**
>
> 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 a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation." (*Emphasis supplied*)"

Revenue Memorandum Circular No. 101-90[2] provides that an offense under the Tax Code is considered discovered only after the manner of commission and the nature and extent of the fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.

In this case, the Joint Affidavit[3] of the revenue officers states that the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) for taxable years 1999 and 2000 were served on accused Chiatsing Cardboard Corporation on February 7, 2005. However, accused Chiatsing Cardboard Corporation allegedly failed to file a protest. Thus, the assessment for deficiency taxes covering taxable years 1999 and 2000 had become final, executory and demandable.

Counting thirty (30) days from the time the FLD and FAN were allegedly served on petitioner, then, the violations can be considered to have been "discovered" on March 9, 2005.

Furthermore, since Section 281 of the NIRC of 1997, as amended, speaks not only of the discovery of the criminal violation but also institution of judicial proceedings for the investigation and punishment of a crime, then it is important to note when the cases were referred to the DOJ for preliminary investigation.

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[2] Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 (now Section 281) of the Tax Code.

[3] Docket, CTA Crim. Case No. O-385, p. 19; subscribed and sworn before the State Prosecutor on May 26, 2005.

In this case, the Joint Affidavit of the revenue officers were referred to the DOJ for preliminary investigation on May 26, 2005. Thus, prescription began to run on May 26, 2005 and lapsed on May 26, 2010. Unfortunately, the Original Informations were only filed with the Court on April 23, 2014, which exceeds the five-year prescriptive period.

Having ruled on the issue of prescription, the Court deems it unnecessary to discuss the other issue raised by accused.

WHEREFORE, premises considered, the instant *Motion to Quash* is hereby **GRANTED**. Accordingly, CTA Crim. Case Nos. O-385 to O-392 are **DISMISSED** on the ground of prescription.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice