CTA Form No. 8 (For DCC)

24-000179-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1138

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. MALCONTENTO
ASST. STATE PROSECUTOR ARLIE ALILAM-RAMOS
Department of Justice
Padre Faura Street, Ermita
1000 Manila

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. RAUL SJ. DE GUZMAN
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8A - Makati City
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

GREETINGS:

You are hereby notified by these presents that on **June 13, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 18, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-1138** (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
-versus-	*Members:*
SKI CONSTRUCTION GROUP, INC., CLAUDIO B. ALTURA, ALBERT ALTURA, and CORNELIO V. CAEDO,	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
17th Floor Philamlife Tower, Paseo de Roxas, Makati City *Accused.*	Promulgated: JUN 13 2024, 10:15AM

x- -x

RESOLUTION

This resolves plaintiff's Motion for Reconsideration (to Resolution dated April 24, 2024) filed by registered mail on May 16, 2024, and received by the Court on May 22, 2024.

Plaintiff assails the Court's Resolution dated April 24, 2024 (assailed Resolution), which dismissed the case on the ground of prescription. Plaintiff asserts that the five (5)-year prescriptive period commenced to run only on February 15, 2018 when the Bureau of Internal Revenue (BIR) revenue officers filed their Joint Complaint-Affidavit with the Department of Justice (DOJ), pursuant to *People v. Castillo*[1] and is interrupted at the same time, citing the 1999 case of *Tupaz v. Ulep* (*Tupaz*).[2] Thus, the filing of the complaint with the DOJ renders the filing date of the Information with this Court immaterial.

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[1] CTA *EB* Crim. Case No. 053 (CTA Crim Case No. O-663) (Resolution), June 8, 2021.
[2] G.R. No. 127777, October 1, 1999.

In *Tupaz,* the Supreme Court reiterated *Lim, Sr. v. Court of Appeals* (*Lim, Sr.*)[3] that the offense of willful failure to pay taxes 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, *viz.*:

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

Applying the foregoing, since accused was similarly charged with willful failure to pay tax, the prescriptive period commenced on February 13, 2014, as found by the Court in the assailed Resolution:

> 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 even date. Due to accused's failure to file a protest to the FAN within thirty (30) days from its receipt, the FAN became final, executory, unappealable and demandable on **February 13, 2014**. Consequently, plaintiff pursued collection efforts against the accused but bore no results. (*Emphasis on the original*)

While *Tupaz* considered the filing date of the complaint with the DOJ to determine that the criminal action was instituted within the five (5)-year prescriptive period, the Supreme Court, in approving the Revised Rules of the Court of Tax Appeals (RRCTA) in 2005, made it clear that it is the filing

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

of the information in Court that interrupts the running of the prescriptive period under Section 2, Rule 9[4] thereof, consistent with *Lim, Sr.* Thus, the filing of the Information after five (5) years from February 13, 2014 had already been extinguished by prescription.

Notably, the investigating Assistant State Prosecutor already issued a Resolution on January 30, 2019, recommending that "the attached information(s) for violations of Section 255, in relation to Section 253(d) and Section 256, of the National Internal Revenue Code of 1997, as amended, against [accused] be approved and filed in the appropriate court"[5] right before the lapse of the five-year prescriptive period. Yet, it took the prosecution more than five (5) years, or only on April 5, 2024, to file the Information with this Court. It is in view of this unfortunate outcome that We reiterate the Supreme Court's admonition in *Corpus, Jr. y Belmoro v. People*:[6]

> .. [T]he court exhorts prosecutors to diligently discharge their functions by keeping in mind the prescriptive period of the crimes contained in the complaints lodged before them, and on the basis thereof timely file the necessary Information before the proper court.

WHEREFORE, plaintiff's *Motion for Reconsideration (to Resolution dated April 24, 2024)* is **DENIED** for lack of merit.

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] 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 added*)

[5] Docket, p. 13.

[6] G.R. No. 255740, August 16, 2023.