CTA Form No. 8

23-000249-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. A-18

PEOPLE OF THE PHILIPPINES,

Plaintiff-appellant,

- versus -

NOTICE OF DECISION

JULIETA N. ARIETE
(Address: Barangay Pag-Asa
Kapalong , Davao del Norte),

Accused-Appellee.

To:

ATTY. ERICKVANN JABESON A. RUIZAL
Bureau of Internal Revenue, Revenue Region No. 19
Office of the Legal Division, 3rd Floor, BIR Building
Bolton Extension, Davao City

ATTY. NOEL PADILLA PALMA
City Prosecutor
Department of Justice, Tagum City
Davao del Norte

JULIETA N. ARIETE
Brgy. Pag-asa, Kapalong
Davao del Norte

HON. ARLENE L. PALABRICA
Presiding Judge
Thru: Branch Clerk of Court
11th Judicial Region
Regional Trial Court - Branch 31
Tagum City, Davao del Norte

GREETINGS:

You are hereby notified by these presents that on **April 8, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippine, **April 11, 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-appellant,*	**CTA CRIM. CASE NO. A-18** (Criminal Case No. 30153)
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
JULIETA N. ARIETE (Address: Barangay Pag-Asa, Kapalong, Davao del Norte) *Accused-appellee.*	Promulgated: APR 08 2024, 1:05PM

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DECISION

CUI-DAVID, J.:

This is an appeal[1] by plaintiff-appellant from the Orders dated February 14, 2023[2] (first assailed Order) and March 27, 2023[3] (second assailed Order) issued by the Regional Trial Court (RTC) of Tagum City, Davao del Norte, Branch 31 (court *a quo*) in the case of *People of the Philippines v. Julieta N. Ariete*, docketed as Criminal Case No. 30153. The dispositive portions of the assailed Orders read:

Order dated February 14, 2023:

> WHEREFORE, on the ground of prescription, this case is hereby **DISMISSED**.

Order dated March 27, 2023:

> This Court shall abide with the interpretation by the Supreme Court of the National Internal Revenue Code (NIRC)

[1] Notice of Appeal dated April 5, 2023, Docket, pp. 86-90.
[2] Docket, p. 74.
[3] Docket, p. 85.

provisions, and thus, finding no merit with the present Motion for Reconsideration. The same is hereby **DENIED**.

THE FACTS

On February 10, 2023, an Information[4] was filed with the RTC of Tagum City, Davao del Norte, charging accused-appellee Julieta N. Ariete (accused-appellee) for willful failure to pay taxes under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That sometime in the year 2007, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business at Brgy. Pag-asa, Kapalong, Davao del Norte, a registered taxpayer of RD No. 112, Tagum City, did then and there willfully, unlawfully and feloniously fail to pay tax due, withhold tax, make return of taxes withheld and remit tax due for the calendar year 2007, in the amount of **FIVE HUNDRED EIGHTY SIX THOUSAND NINE HUNDRED TWENTY THREE PESOS (Php 586,923.00)**, after Final Assessment Notice dated December 15, 2010, to the damage and prejudice of the Philippine Government in the aforesaid amount.
>
> CONTRARY TO LAW.

As alleged in the *Joint Complaint-Affidavit* filed with the Office of the City Prosecutor of Tagum City, Davao del Norte, Department of Justice (DOJ) on October 28, 2022,[5] an examination of accused-appellee's books of accounts and other accounting records for all internal revenue tax liabilities for taxable year (TY) 2007 was conducted by virtue of Letter of Authority (LOA) with No. LOA 2008-00022707.[6]

Consequently, a Preliminary Assessment Notice (PAN) dated November 4, 2010, and a Formal Letter of Demand with Details of Discrepancy and Assessment Notices (FLD/FANs) dated December 15, 2010, were both "issued and personally served" to accused-appellee.[7]

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[4] Docket, p. 12.
[5] Docket, pp. 17-24.
[6] Joint Complaint-Affidavit, par. 6, Docket, pp. 18-19.
[7] *Id.*, par. 12, Docket, pp. 20-21.

Plaintiff-appellant further alleged that in view of accused-appellee's failure to file an administrative appeal within thirty (30) days from receipt of the FLD/FANs, the assessment became *final and executory* pursuant to Section 228[8] of the NIRC of 1997, as amended.[9]

Thereafter, a Collection Notice (Before Issuance of Warrant of Distraint and/or Levy) dated March 31, 2011,[10] Collection Letter dated July 15, 2011,[11] Warrant of Distraint and/or Levy (WDL) dated April 15, 2011,[12] Demand Letter Before Suit dated October 20, 2014,[13] Warrants of Garnishment dated October 20, 2014 and January 14, 2021,[14] Demand Letter Before Suit dated April 7, 2022,[15] and Five-Day Notice Prior to Filing dated September 29, 2022,[16] were issued against accused-appellee.

However, despite receiving the aforesaid notices and demands to pay, accused-appellee's tax liabilities remained uncollected, prompting the BIR to file a criminal complaint with the DOJ on October 28, 2022.[17]

After the preliminary investigation, the investigating prosecutor issued a Resolution dated December 19, 2022,[18] finding probable cause and recommended that an Information be filed against accused-appellee for violation of Section 255 of the NIRC of 1997, as amended.

On February 13, 2023, the case was raffled to the court *a quo*.[19]

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[8] SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases: ...
The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

[9] Joint Complaint-Affidavit, par. 13, Docket, p. 21; Appellant's Brief, par. 11, Docket, p. 107.
[10] Docket, p. 41.
[11] *Id.*, p. 42.
[12] *Id.*, p. 43.
[13] *Id.*, p. 45.
[14] *Id.*, pp. 46-57.
[15] *Id.*, p. 60.
[16] *Id.*, p. 61.
[17] Joint Complaint-Affidavit, pars. 14-28, Docket, pp. 17-24.
[18] Docket, pp. 13-16.
[19] *Id.*, p. 12.

On February 14, 2023, the court *a quo* issued the first assailed Order [20] dismissing the case on the ground of prescription.

Aggrieved, plaintiff-appellant filed a *Motion for Reconsideration (To the Order dated February 14, 2023)*[21] on March 17, 2023, which the court *a quo* denied in the second assailed Order.[22]

Hence, this appeal.

On June 6, 2023, the Court received the RTC Records consisting of 82 pages.[23]

On July 12, 2023, the Court required plaintiff-appellant to file its Appellant's Brief within thirty (30) days from receipt thereof.[24]

On September 6, 2023, the Court received plaintiff-appellant's Appellant's Brief,[25] while accused-appellee failed to file an Appellee's Brief pursuant to Section 4, Rule 124 of the Revised Rules of Criminal Procedure.[26]

On November 17, 2023, the Court submitted the case for decision.[27]

THE ISSUE

Plaintiff-appellant puts forth this *lone* issue for the Court's resolution:[28]

> WHETHER PLAINTIFF-APPELLANT'S RIGHT TO FILE A CRIMINAL CASE AGAINST ACCUSED-APPELLEE HAS ALREADY PRESCRIBED.

Plaintiff-appellant submits that the period of limitation for assessment and collection is provided under Section 203, in relation to Section 222 of the NIRC of 1997, as amended. As such, the tax may be assessed at any time within ten (10) years

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[20] *Supra*, note 2.
[21] Docket, pp. 75-84.
[22] *Supra*, note 3.
[23] Docket, p. 97.
[24] Notice to File Brief, Docket, p. 98.
[25] Docket, pp. 103-112.
[26] Records Verification dated November 3, 2023, Docket, p. 118.
[27] Minute Resolution, Docket, unpaged.
[28] Statement of the Issue, Appellant's Brief, Docket, p. 107.

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after the discovery of the falsity, fraud, or omission, and such assessment may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

Plaintiff-appellant further argues that since accused-appellee substantially underdeclared her taxable income for TY 2007 by more than 30%, *prima facie* evidence of false or fraudulent return exists under Section 248 (b) of the NIRC of 1997, as amended. Thus, the applicable period to collect the assessment is five (5) years, reckoned from the issuance of the FLD/FANs on December 15, 2010, or until December 15, 2015.

Finally, plaintiff-appellant alleges that the running of the statute of limitations on the enforcement of collection proceedings in court has not yet prescribed, for it was suspended under Section 223[29] of the NIRC of 1997, as amended, because no property of accused-appellee could be located.

THE COURT'S RULING

The Court has no jurisdiction over this case.

Before resolving the lone issue, the Court shall first determine whether it has jurisdiction over the appeal.

Section 7(b)(2)[30] of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the jurisdiction of the Court of Tax Appeals (CTA) in criminal cases. Relatedly, Section 3(b)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA),[31] as amended, provides that it is the Court in Division

[29] SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter:...

[30] SEC. 7. *Jurisdiction.* — The CTA shall exercise: ...
(b) Jurisdiction over cases involving criminal offenses as herein provided: ...
(2) Exclusive appellate jurisdiction in criminal offenses:
a. Over appeals from the judgments, resolutions or orders of the **Regional Trial Courts** in tax cases originally decided by them, in their respective territorial jurisdiction.

[31] SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise: ...
(b) Exclusive jurisdiction over cases involving criminal offenses, to wit: ...
(2) **Appellate jurisdiction over appeals from** the judgments, resolutions or **orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code** ... and other laws administered by the Bureau of Internal Revenue ... , where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed; *[Emphasis supplied]*.

that exercises exclusive appellate jurisdiction over criminal cases decided by the RTC in their original jurisdiction involving criminal offenses under the tax laws.

Under Section 9(a), Rule 9[32] of the RRCTA, an appeal to the Court in criminal cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal under Sections 3(a) and 6, Rule 122 of the Rules of Court *within 15 days* from receipt of a copy of the decision or final order with the RTC that rendered the final judgment or order appealed from and by serving a copy upon the adverse party.

Plaintiff-appellant alleged that it received the second assailed Order through electronic mail on *March 27, 2023.* Counting 15 days from then, plaintiff-appellant had until April 11, 2023, to file its notice of appeal with the court *a quo*.

Plaintiff-appellant filed a notice of appeal only on *April 14, 2023*, or <u>three (3) days late</u>.

The failure of plaintiff-appellant to file its notice of appeal on time renders the assailed Order dated March 27, 2023 final and unappealable. As a result, the dismissal of the case, as decreed by the court *a* quo, became final and beyond review on appeal.

As held in *People v. Mallari, et al.*,[33] "judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law."

Thus, although the court *a quo* gave due course to plaintiff-appellant's appeal and elevated the RTC records first to the Court of Appeals and finally to this Court,[34] it is undeniable that the Order dated March 27, 2023 had already become final and executory by April 12, 2023, or the day after the last day of filing the appeal.

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[32] SEC. 9. *Appeal; period to appeal.* – (a) An appeal to the Court in criminal cases decided by a Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal pursuant to Sections 3(a) and 6, Rule 122 of the Rules of Court within fifteen days from receipt of a copy of the decision or final order with the court which rendered the final judgment or order appealed from and by serving a copy upon the adverse party. The Court in Division shall act on tbe appeal.
[33] G.R. No. 197164, December 4, 2019, citing *Philippine Savings Bank v. Papa*, G.R. No. 200469, January 15, 2018.
[34] Docket, pp. 92-97.

Based on the foregoing, the Court has no jurisdiction to review the assailed Orders of the court *a quo*.

The criminal action had already prescribed.

Even if the Court has jurisdiction over this case, it must still be dismissed due to prescription.

In dismissing the case on the ground of prescription, the court *a quo*, in the first assailed Order, ruled as follows:

> It was held in Commissioner of Internal Revenue v[.] Court of Tax Appeal[s], G.R. No. 258947[,] March 29, 2022, to wit:
>
> > "Here, given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had another three years to initiate the collection of taxes by distraint or levy or court proceeding. Accordingly, since the FAN/FLD was mailed on December 12, 2014, the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce the collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in 2020."
>
> The complainant BIR Revenue Region No. 19 may argue that their latest Demand Letters and Warrant of Garnishment are dated in the year 2021 and 2022, thus prescriptive period has not yet set in.
>
> No, this Court will not allow such strategy by the BIR to scavenge dormant cases which has already prescribed by breathing life to it with their latest demand letters and other documents.
>
> WHEREFORE, on the ground of prescription, this case is hereby **DISMISSED**.[35]

Plaintiff-appellant contends that the court *a quo* erred in failing to appreciate and sustain its defense that under the NIRC of 1997, as amended, its right to institute action has not yet prescribed.[36] It argues that accused-appellee substantially underdeclared her taxable income for TY 2007 by more than

[35] Docket, p. 74.
[36] Appellant's Brief, par. 11, Docket, pp. 108-110.

30%, which is *prima facie* evidence of false or fraudulent return under Section 248 (b) of the NIRC of 1997, as amended.

Citing Section 203[37] and Section 222[38] of the NIRC of 1997, as amended, which provide for the periods of limitation for *assessment* and *collection,* plaintiff-appellant maintains that the applicable period to collect the assessment is not three (3) years but five (5) years, reckoned from the issuance of the FLD/FANs on December 15, 2010, or until December 15, 2015. Further, it claims that after the service of the WDL, no properties owned by accused-appellee were found to satisfy the assessment. Thus, the running of the statute of limitations on the enforcement of collection proceedings in court has not yet prescribed, for it was suspended under Section 223[39] of the NIRC of 1997, as amended.

We are not persuaded.

While the Court agrees with the court a *quo* that the case has already prescribed, the case cited by the court *a quo, Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.* (*QLDI* case),[40] which pertains to a disputed assessment, is inapplicable in the instant criminal case for violation of the Tax Code.

The Supreme Court explained in the *QLDI* case that Section 203 provides a **three (3)-year** prescriptive period *to assess* deficiency taxes. As an exception, Section 222 provides a **ten (10)-year** prescriptive period *to assess* deficiency taxes in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, and a **five (5)-year** prescriptive period *to collect* following the assessment. On the other hand, Section 223 refers to the instances when the running of the

[37] SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: ...
[38] SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
(b) ...
(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
[39] SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter: ...
[40] G.R. No. 258947, March 29, 2022.

statute of limitations provided in Sections 203 and 222 is suspended.

Undoubtedly, the prescriptive periods provided under Sections 203 and 222 and the suspension of the prescriptive periods under Section 223 apply only to the *assessment* and *collection* of internal revenue taxes, but not in a criminal case where the prescriptive period for filing an action for the violation of any provision of the NIRC of 1997, as amended, is governed by Section 281, *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 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.

In the instant case, the Information filed against accused-appellee Julieta N. Ariete was for willful failure to pay taxes under Section 255 of the NIRC of 1997, as amended.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* (*Lim*),[41] the Supreme Court discussed that in willful refusal to pay deficiency taxes, the prescription runs from the finality of assessment, *i.e.*, failure to pay within the period given in the FLD/FAN, *viz.*:

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

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, the violations as charged **could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
>> "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)
>
> **Inasmuch as the *final* notice and demand for payment of the deficiency taxes was served on petitioners on <u>July 3, 1968</u>, 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*]

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[42] which states:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.,*" G.R. Nos. L-48134-37.
>
> 1. *When cause of action for <u>willful failure to pay deficiency tax</u> occurs.*

[42] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. **The offense is *committed* only <u>after receipt is coupled with refusal to pay the tax within the allotted period</u>.**
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
> (a) **The 5-year prescriptive period in** an offense or **willful failure to pay a deficiency tax assessment commences to *run* only <u>after the receipt of the final notice and demand by the taxpayer, and he refuses to pay</u>**. [*Emphasis supplied*]

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 explained in *Lim* to mean *the time when the Information is filed with the Court.*[43]

On November 22, 2005, the Supreme Court approved the RRCTA where Section 2, Rule 9 thereof provides that the institution of criminal action is done by filing the information with the Court, which, in turn, interrupts the prescriptive period. [44]

From the foregoing, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the time the payment period had lapsed without any payment or appeal being made by the taxpayer. Prescription continues to run until the filing of the Information in Court.

In the *Joint Complaint-Affidavit,* it was alleged that the FLD/FANs were "issued and personally served" to accused-appellee on December 15, 2010,[45] and that in view of accused-appellee's failure to file an administrative appeal within thirty (30) days from receipt of the FLD/FANs, the assessment became

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[43] G.R. Nos. L-48134-37, October 18, 1990.
[44] RULE 9 - PROCEDURE IN CRIMINAL CASES
...
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]
[45] Docket, par. 12, pp. 20-21; Appellant's Brief, par. 10, Docket, pp. 106-107.

final and executory pursuant to Section 228 of the NIRC of 1997, as amended.[46] Counting thirty (30) days from receipt of the FLD/FANs, the assessment attained finality on **January 15, 2011**.

Applying the *Lim* case and RMC No. 101-90, "the offense is **committed** only after receipt is coupled with refusal to pay the tax within the allotted period." Thus, plaintiff-appellant had five (5) years from January 15, 2011, or until **January 15, 2016,** to file the Information in court. The Information dated February 1, 2023, was filed with the court *a quo* only on February 10, 2023.

Clearly, the government's right to institute a criminal action against accused-appellee had already prescribed for *more than seven (7) years* when the Information was filed on **February 10, 2023**.

Notably, while it was alleged in the *Joint Complaint-Affidavit* that the FLD/FANs were "personally served" to accused-appellee,[47] the veracity of the said claim could not be determined by the Court since upon perusal of the records, the FLD/FANs dated December 15, 2010 were sent to accused-appellee through registered mail.[48] The registry return receipt was signed by accused-appellee but was left undated.[49]

Under prevailing regulations, service of the FLD/FAN may be made through registered mail, and there is created a disputable presumption that such assessment notices were received by the addressee in the regular course of the mail.[50] The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[51]

Even if the Court assumes that the FLD/FANs were received by accused-appellee thirty (30) days from its mailing, or on January 14, 2011, accused-appellee failed to question or protest the FLD/FANs within thirty (30) days therefrom, or until February 13, 2011. Thus, the FLD/FANs became final and executory on February 14, 2011.

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[46] Docket, par. 13, Docket, p. 21; Appellant's Brief, par. 11, Docket, p. 107.
[47] Docket, par. 12, pp. 20-21; Appellant's Brief, par. 10, Docket, pp. 106-107.
[48] Docket, p. 37.
[49] *Id.*
[50] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020.
[51] Philippine Postal Corporation, Post Office Delivery Lead Time, Estimated Turn Around Time for Domestic Mail Services, available at https://phlpost.gov.ph/postal-office-delivery-lead-time (last accessed on February 7, 2024).

Plaintiff-appellant had five (5) years from February 14, 2011, or until **February 14, 2016** to file the Information before the court *a quo*. Just the same, the Information filed on February 10, 2023, is beyond the five-year prescriptive period.

All told, We affirm the court *a quo*'s dismissal of the case but on the ground of prescription under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, plaintiff-appellant's appeal is **DISMISSED** due to lack of jurisdiction and prescription.

Accordingly, the appealed Orders dated February 14, 2023, and March 27, 2023, rendered by the Regional Trial Court of Tagum City, Davao del Norte, Branch 31, in the case entitled, *People of the Philippines v. Julieta N. Ariete,* docketed as Criminal Case No. 30153, **DISMISSING** the case on the ground of prescription, are **DEEMED AFFIRMED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice