REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

QNX SOLUTIONS, INCORPORATED, and its responsible corporate officers ANGELO R. BALILI (President), SANTIAGO T. PULIDO (Treasurer), and GERTRUDES S. TAMAYO (Corporate Secretary),
Accused.

CTA CRIM CASE NO. O-990
For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 0 9 2023 ; 2:45PM

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RESOLUTION

On December 6, 2022, the prosecution filed an *Information* charging accused **QNX Solutions, Incorporated** and its responsible corporate officers, **Angelo R. Balili, Santiago T. Pulido,** and **Gertrudes S. Tamayo**, its president, treasurer, and corporate secretary, respectively, for violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about 06 January 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, QNX Solutions, Incorporated, and Angelo R. Balili, Santiago T. Pulido and Gertrudes S. Tamayo, its president, treasurer and corporate secretary, respectively, and, therefore, its responsible corporate officers, with Tax Identification No. 206-266-184-000, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay the company's final withholding of value-added tax obligations for the year 2010,

to wit: One Million One Hundred Fifteen Thousand One Hundred Forty-Seven Pesos and Fifty-Two Centavos (Php1,115,147.52), exclusive of surcharge and interest, under BIR Assessment Notice No. WG-ELA-52039-10-13-0347 **did then and there willfully, unlawfully, knowingly, and feloniously fail, refuse and neglect to pay** the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.[1]

CONTRARY TO LAW."

In the Resolution[2] promulgated on January 10, 2023, the Court found probable cause to issue arrest warrants against accused Angelo R. Balili, Santiago T. Pulido, and Gertrudes S. Tamayo. Hence, *Warrants of Arrest* were issued against said accused, who may post bail for their provisional liberty in the amount of Sixty Thousand Pesos (Php60,000.00) each under the pertinent provisions of the 2018 Bail Bond Guide.

On February 17, 2023, *Returns of Warrants of Arrest* were filed by Olivia A. Sagaysay, Police Lieutenant Colonel, Acting Chief, DSOU, Criminal Investigation and Detection Group, Camp BGen. Rafael T. Crame, Quezon City, stating that accused Angelo R. Balili, Santiago T. Pulido, and Gertrudes S. Tamayo could not be found at their given address despite diligent efforts exerted.

On February 22, 2023, the Court noted the *Returns of Warrants of Arrest* and ordered that *Alias Warrants of Arrest* be issued against the accused. The Court also directed the prosecution and the Commissioner of Internal Revenue to exert efforts in determining the exact whereabouts of the said accused for their early apprehension.[3]

Alias Warrants of Arrest, all dated March 2, 2023, were then issued against the accused.

Meanwhile, upon re-examining the records and the factual antecedents obtained in the instant case, the Court finds that this case should be *dismissed* on the ground of *prescription.*

We explain.

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[1] Boldfacing and underscoring supplied.
[2] Resolution dated January 10, 2023, Docket, pp. 70-73.
[3] Resolution dated February 22, 2023, Docket, p. 90.

Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for filing criminal actions for violations of the 1997 NIRC, to wit:

> "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." (*Boldfacing 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 both instances, the period is interrupted when proceedings are instituted against the guilty persons.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[4] (*Lim case*), the Supreme Court elucidated the point when a *prescription* for criminal violation of the provisions of the NIRC involving taxpayer's refusal to pay the deficiency income taxes due, commences, *viz.*:

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

"Relative to Criminal Case 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.*'

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 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**." (*Boldfacing supplied*)

The foregoing pronouncement was even circularized through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[5] which stated:

"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.

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

1. *When cause of action for willful failure to pay deficiency tax occurs.*

   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 after receipt is coupled with refusal to pay the tax within the allotted period.

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 after the receipt of the final notice and demand by the taxpayer and he refuses to pay**. (*Boldfacing supplied*)

   xxx xxx xxx" (*Boldfacing supplied*)

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, the date of commission of which is known, the five (5)-year prescriptive period begins to run from the date the assessment notices became final and executory and continues to run until the filing of the *Information* in Court.

In the case at bar, record reveals that the Formal Assessment Notice (FAN) with Details of Discrepancies, assessing QNX Solutions, Incorporated of deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), final withholding VAT (FWVAT), and Documentary Stamp Tax (DST) was issued on September 9, 2013, and the same was received by QNX Solutions, Incorporated on September 13, 2013.[6]

Under Section 228[7] of the NIRC of 1997, as amended, QNX Solutions, Incorporated had thirty (30) days from September 13,

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[6] DOJ Resolution dated February 7, 2020, Docket, p. 14.

[7] 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:

xxx xxx xxx

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.

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2013, or until October 13, 2013, to file its protest. Allegedly, QNX Solutions, Incorporated failed to file a protest. Thus, the assessments issued against it became final and executory on **October 14, 2013.**[8]

Based on the foregoing and following the ruling in *Lim*, the five (5)-year prescriptive period to indict the accused for failure to pay tax lapsed on ***October 14, 2018***. Thus, the right of the government to institute the case against the accused had already prescribed when the *Information* was filed before this Court on ***December 6, 2022***.

Indeed, the prosecution's failure to timely file the *Information* in Court within the five (5)-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, is fatal to its cause.

WHEREFORE, premises considered, CTA Crim. Case No. O-990 is **DISMISSED** on the ground of prescription.

Accordingly, the *Alias Warrants of Arrest* issued against accused **ANGELO R. BALILI**, **SANTIAGO T. PULIDO**, and **GERTRUDES S. TAMAYO**, all dated March 2, 2023, are **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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. *xxx*

[8] Joint Complaint-Affidavit dated April 11, 2019, Docket, pp. 23-27.