REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case. O-925** (NPS Docket No. XVI-INV-18J-00367)
-versus-	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended (Value-Added Tax)
	Members:
	DEL ROSARIO, *PJ, Chairperson,* **MANAHAN, and REYES-FAJARDO** ***JJ.***
FAIVO PASCUAL BARTOLOME, (22 M.J. Guerrero St., Brgy. 21, Laoag City, Ilocos Norte) At Large, *Accused.*	Promulgated: DEC 2 8 2022; 1:59 P.M.

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RESOLUTION

For this Court's resolution is plaintiff's *Compliance* filed on November 14, 2022 submitting an Amended Information in response to the Resolution of the Court dated October 27, 2022. The accusatory portion of the Amended Information states:

> That on or about November 17, 2014 and thereafter, in Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **FAIVO PASCUAL BARTOLOME**, a registered taxpayer required by law to file tax returns at the time or times required by law, rules and regulations and to pay the corresponding tax, as provided under the NIRC of 1997, as amended, did then and there willfully, unlawfully and knowingly fail to pay deficiency **Value-Added Tax (VAT)** for the taxable year 2010, in the amount of One Million One Hundred Fifty Thousand Nine Hundred Forty Two and 88/100 (P1,150,942.88), **exclusive of charges and penalties**, despite final assessment notice,

including prior and post notice and demands to pay the last being the Formal Letter of Demand and Assessment Notices dated November 17, 2014 issued by the Bureau of Internal Revenue, to the damage and prejudice of the Government.

CONTRARY TO LAW.

The Court takes note of the foregoing Compliance and will now determine probable cause. The following documents were attached to the Information:

1. Resolution dated October 4, 2019 issued by Assistant State Prosecutor Jovyanne E. Santamaria, recommending that accused Faivo Pascual Bartolome be charged for violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended;

2. Resolution dated October 4, 2019 issued by Assistant State Prosecutor Jovyanne E. Santamaria denying accused's Motion for Reconsideration;

3. A letter of then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of Justice, dated October 10, 2018, stating the authority and approval for the filing and institution of criminal Complaint against accused Faivo Pascual Bartolome; and

4. Joint Complaint-Affidavit (JCA) of Lourdes P. Anteneo, Elma L. Gutierrez and Faustino B. Lumabao dated October 12, with the following attachments:

a. BIR Integrated Tax System (ITS) printout;[1]
b. E-Letter of Authority No. 201000010748;[2]
c. Preliminary Assessment Notice dated October 27, 2014;[3]
d. Formal Letter of Demand dated November 17, 2014;[4]
e. Assessment Notices dated November 17, 2014;[5]
f. Request for Reinvestigation dated December 5, 2014;[6]
g. Letter dated January 20, 2015;[7]

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1 Annex "A," JCA.
2 Annex "A-1," JCA.
3 Annex "B," JCA.
4 Annex "C," JCA.
5 Annexes "D" to "D-5," JCA.
6 Annex "E," JCA.
7 Annex "F," JCA.

h. Letter dated January 28, 2015 by RDO Simplicio V. Cabantac;[8]
i. Waiver of Defense of Prescription dated December 5, 2013;[9]
j. 1st Notice dated May 14, 2015;[10]
k. Final Notice dated July 30, 2015 and Registry Return Receipt;[11]
l. Warrant of Distraint and/or Levy.[12]

OUR RULING

This case merits outright dismissal.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[13]

Jurisprudence[14] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

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

> **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.

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8 Annex "G," JCA.
9 Annex "H," JCA.
10 Annex "I," JCA.
11 Annexes "J" and "J-1,", JCA.
12 Annex "K," JCA.
13 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
14 *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

> 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.
>
> ....

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[15]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.*, interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[16] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> ...

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15 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.

16 G.R. Nos. L-48134-37, October 18, 1990.

> 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 wilful refusal to pay the taxes due within the alloted 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.**
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> ...[17]

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:

> **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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied).

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an information with this Court.

As claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN), all dated November 17, 2014 for value-added tax obligation covering the taxable year 2010 were served to and personally received by accused on November 20, 2014. *Sans* payment thereof

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[17] Boldfacing supplied.

by accused, the tax offense, in this case, was *committed* on December 20, 2014.

Counting from December 20, 2014, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on December 20, 2019. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on September 6, 2022.

The failure of the prosecution to timely file the Information in Court, within the five-year prescriptive period as provided under Section 281 of the NIRC, as amended, renders the present case dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-925, is **DISMISSED.**

SO ORDERED.

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice