REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff*	**CTA CRIM CASE NO. O-972**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
LOGISTICS.COM CORPORATION, JOVAN G. TRIAS, ARMAN R. ONG, and ERMA O. AUNARIO *Accused.*	Promulgated: JUN 2 2 2023

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3:35 p.m.

RESOLUTION

For the Court's resolution is accused's Urgent Omnibus Motions: (1) Motion to Quash and/or Outright Summary Dismissal, (2) Motion to Recall Warrants of Arrest, and (3) Motion to Approve/Admit Bail Posting by accused-respondents Jovan G. Trias, Arman R. Ong, and Erma O. Aunario ("Omnibus Motion"), filed on 30 March 2023, as well as the Manifestations and Urgent Omnibus Motions, filed on 17 April 2023, which essentially reiterate the matters raised in the earlier Urgent Omnibus Motions.

The accused manifest in their Omnibus Motion that on 9 March 2023, Trias, Ong, and Aunario, assisted by private defense counsel, presented themselves to the Court and sought the approval and allowance of their bail application in the above-captioned case. The application was granted on the same day, thus allowing the accused to post their respective cash bail bonds in the amount of Php60,000 each.

On 23 March 2023, the accused received advice from court staff that Informations were filed, resulting in the institution of CTA Criminal Case Nos. O-974 and O-975. These cases, including the case at hand, are all related to the alleged violation/s of ***Section 255***, in relation to ***Sections 253 and 256 of the National Internal Revenue Code, as amended*** ("*NIRC*"), consisting of the alleged willful and deliberate unlawful and felonious failure to pay deficiency taxes, all for taxable year ("TY") 2010. While the instant Criminal Case No. O-972 relates to non-payment of improperly accumulated earnings tax ("IAET"), Criminal Case Nos. O-974 and O-975 involve value added tax ("VAT") and expanded withholding tax ("EWT"), respectively.

Accused then raise that a prior instituted case, Criminal Case No. O-973, which involved alleged deficiency income tax also for the TY2010, was dismissed outright by the Court's First Division due to prescription, as stated in the First Division's Resolution, dated 30 January 2023. The corresponding Motion for Reconsideration was thereafter denied for having been belatedly filed, per the Resolution, dated 6 March 2023.

Accordingly, accused argue that the instant case should be dismissed outright due to violation of constitutional right against double jeopardy brought about by identity of offenses charged, resulting from the splitting of identical/singular cause of action that bars actions/s by *litis pendencia* and/or *res judicata.*

In this regard, accused pray for the following:

a) The dismissal of the instant Criminal Case No. O-972 and the corresponding quashal of the information on the ground of multiplicity of suits that may cause possible violation of the constitutional right against double jeopardy due to identity of offenses charges as consequence of splitting of identical or singular cause of action;
b) The suspension and resetting of the arraignment and pre-trial conference to a later date;
c) The cancellation of the warrant of arrest issued by Court, as well as the cash bail bond posted by the accused; and
d) Alternatively, the declaration of the sufficiency of the cash bail bond posted for the instant Criminal Case No. O-972 for purposes of bail bonds for Criminal Case Nos. O-974 and O-975; or otherwise the granting of a reduction of the amount of bail bond.

The second matter above has already been addressed by the Court in its Resolution, dated 18 April 2023 whereby the arraignment and pre-trial were cancelled and reset until further orders from the Court.

As regards the main issues raised, the Court hereby finds merit in the prayer for the dismissal of the instant case and the cancellation of the corresponding warrants of arrest, but not for the reasons relied upon by the accused.

Fundamentally, the accused raise **forum shopping** on the part of the plaintiff as a ground for the dismissal of the instant case. Pursuant to prevailing jurisprudence, forum shopping can be committed in three ways, to wit:

(1) Filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*);

(2) Filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); or

(3) Filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is either *litis pendentia* or *res judicata*).[1]

In the case of ***Boracay Island Water Co. v. Malay Resorts Holdings, Inc.***,[2] the Supreme Court discussed that the test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present or whether a *final judgment* in one case will amount to res judicata in another. Further, in the same case, citing ***Santos Ventura Hocorma Foundation, Inc. vs. Mabalacat Institute, Inc.***,[3] the requisites of *litis pendencia* and *res judicata* were enumerated as follows:

> "The requisites of *litis pendentia* are: (a) **the identity of parties**, or at least such as representing the same interests in both actions; (b) the **identity of sights asserted and relief prayed for**, the relief being founded on the same facts; and (c) **the identity of the two cases** such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the **former judgment must be final**; (b) **the court which rendered it had jurisdiction over the subject matter and the parties**; (c) it must be a **judgment on the merits**; and (d) there must be, between the first and second actions, **identity of parties, subject matter, and causes of action**."
> (Emphasis supplied.)

Meanwhile, **cause of action** has been established in jurisprudence as an act constituting a delict or wrong by which the defendant violated the right of the plaintiff, causing the latter loss or injury.[4] On this basis, the elements of a cause of action are: (1) a right existing in favor of the plaintiff; (2) a duty on the part of the defendant to respect such right; and (3) an act or omission of the defendant in violation thereof.[5]

The rule on prohibiting the ***splitting of a single cause of action*** is expressly provided in ***Section 4, Rule 2 of the Rules of Court*** which states:

> **"Section 3. One suit for a single cause of action.** A party *may not institute more than one suit* for a *single cause of action.*

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[1] ABS-CBN Corp. vs. ABC Development Corp., G.R. No. 201664 (Notice), 16 October 2019 citing Lanao del Norte Electric Cooperative, Inc. vs. Provincial Government of Lanao del Norte, G.R. No. 185420, 29 August 2017.
[2] G.R. No. 235641, 17 January 2023.
[3] G.R. No. 211563, 29 September 2021.
[4] Pilipinas Shell Foundation, Inc. and Shell Philippines Exploration B.V. vs. Tomas M. Fredeluces, et al., G.R. No. 174333, 20 April 2016.
[5] Cathay Pacific Airways vs. Juanita Reyes, et al, G.R. No. 185891, 26 June 2013.

> **Section 4. Splitting a single cause of action; effect of.** If two or more suits are instituted on the basis of the same cause of action, *the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.*"
> (Emphasis and italics supplied.)

In the case at hand, the accused insist that there exists a splitting of a singular or identical cause of action since, according to accused, the same evidence support and establish the cause of action for each and every one of the pending CTA criminal cases (CTA Criminal Case Nos. O-972, O-973, O-974, and O-975) against the them.

To hold up their claim, the accused find basis from the case of ***Rivera Golf Club Inc. vs. CCA Holdings, B.V.***,[6] where the Supreme Court ruled that the determination of existence of a single cause of action rests on whether the same evidence would support and establish the causes of action in both or all of the cases instituted, to wit:

> It is a settled rule that the application of the doctrine of *res judicata* to identical causes of action does not depend on the similarity or differences in the forms of the two actions. A party cannot, by varying the form of the action or by adopting a different method of presenting his case, escape the operation of the doctrine of *res judicata*. The test of identity of causes of action rests on whether the same evidence would support and establish the former and the present causes of action.
>
> We held in *Esperas v. The Court of Appeals* that the ***ultimate test*** in determining the presence of identity of cause of action is to consider whether the same evidence would support the cause of action in both the first and the second cases. Under the **same evidence test**, when the same evidence support and establish both the present and the former causes of action, there is likely an identity of causes of action.
> (Underscoring supplied; emphasis included; citations omitted.)

Here, the accused highlight that the complaint upon which the criminal prosecutions and/or information were based contained the same allegations of fact and are supported by the same pieces of evidence. The information, according to accused, charge the same offense involving the same subject matter arising from the same transaction and against the same entity and/or parties.

Necessarily, the accused posit that the splitting of a cause of action should result in the dismissal of the instant case, as well as of CTA Criminal Case Nos. O-974 and O-975, due to either *litis pendencia* or *res judicata*, brought about by the **Resolution, dated 30 January 2023, of the Court's First Division**, where the dismissal of the CTA Criminal Case No. O-973 was ordered due to prescription, thus:

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[6] G.R. No. 173783, 17 June 2015.

> "**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-973, is **DISMISSED**."

Upon review of the records, the Court fails to find an identity of the causes of action among the pending criminal cases against the accused that should result to dismissal on the ground of *litis pendencia* or *res judicata*.

Based on the informations filed, the charges allege violations of ***Section 255***, in relation to ***Sections 253 and 256 of the NIRC***. However, the tax types and corresponding amounts differ among the cases as follows:

CTA Criminal Case No.	Tax Type	Deficiency Tax (exclusive of surcharge and interest)
O-972	Improperly Accumulated Earnings Tax	Php1,224,810.07[7]
O-973	Income Tax	Php31,272,966.72[8]
O-974	Value Added Tax	Php2,360,541.23[9]
O-975	Expanded Withholding Tax	Php1,732,815.64[10]

Section 255 of the NIRC, as amended, provides for the penalties in case there is a failure to file a return, supply correct information, or pay, withhold, and remit taxes, to wit:

> "**SECTION 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. x x x"

Based on the above provision, the following are the elements which need to be proven in order to sustain a conviction:

1. The **accused was required under the NIRC to pay any tax**, make a return, keep any record, or supply correct and accurate information, or

[7] Docket, CTA Crim Case No. O-972, p. 5.
[8] Docket, CTA Crim Case No. O-973, p. 5.
[9] Docket, CTA Crim Case No. O-974, p. 5.
[10] Docket, CTA Crim Case No. O-975, p. 5.

withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;

2. The **accused failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

3. The **accused willfully failed to pay the tax**, make the return, keep the record, or supply the correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules or regulations.[11]

Clearly, a finding of violation of ***Section 255*** necessitates proof of a willful failure to pay the alleged deficiency taxes which are, in this case, income tax, VAT, EWT, and IAET.

The Court notes that these taxes are of different natures, bases, prescribed tax returns, and tax filing deadlines. Thus, while the third element of willfulness on the failure to pay may be established by the non-compliance to a Formal Letter of Demand ("FLD") or Final Decision on Disputed Assessment ("FDDA") duly received by the taxpayer and which has already become final, the propriety of imposition of the alleged deficiency taxes pursuant to the NIRC *(first element)* and non-payment thereof (*second element*) are subject to separate determinations based on the corresponding tax type.

Accordingly, following the **same evidence test**, there is no splitting of a single cause of action in this case and the other tax criminal cases instituted against the accused.

However, despite the foregoing, the Court still finds the dismissal of the case in order due to prescription.

At the outset, the Court recognizes that the defense of prescription was not raised by the accused in their Omnibus Motion. Regardless, it is still within the power of the Court to rule on matters not raised in the parties' pleadings if these are necessary for the orderly disposition of the case,[12]

[11] People of the Philippines vs. Christopher John Junio Coronel, CTA Crim. Case Nos. O-585 & O-586, *Resolution,* 8 October 2019.
[12] Republic v. First Gas Power Corp., G.R. No. 214933, 15 February 2022.

pursuant to ***Section 1, Rule 14***[13] ***of the Revised Rules of the Court of Tax Appeals.***[14]

Section 281 of the NIRC provides for the prescription for violations of the Tax Code, thus:

> "**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.
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> 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."

In the case of ***Emilio E. Lim, Sr. vs. Court of Appeals ("Lim case")***,[15] as cited in ***Petronila C. Tupaz vs. Honorable Benedicto B. Ulep ("Tupaz case")***,[16] the Supreme Court applied the rules on prescription as follows:

First, the prescriptive period for violations of the provisions of the Tax Code is five (5) years.

Next, the start of the running of the prescriptive period will depend on whether or not the offense was known at the time it was committed. If known at the time of commission, prescription sets in from the time the violation was committed. However, if the offense was not known at the time of commission, prescription begins to run from the time of discovery of the offense and the institution of the judicial proceedings.

In the ***Lim case***, the Supreme Court clarified that violations as charged could only be committed after service of the final notice and demand for payment of the deficiency taxes. Prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense is

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[13] RULE 14. JUDGMENT, ITS ENTRY AND EXECUTION.

SECTION 1. Rendition of judgment.
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In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

[14] A.M. No. 05-11-07-CTA, 22 November 2005.

[15] G.R. No. L-48134-37, 18 October 1990.

[16] G.R. No. 127777, 1 October 1999.

committed only after receipt is coupled with the willful refusal to pay the taxes due within the allotted period.

Meanwhile, as regards the tolling of the running of the prescriptive period, the decisions of the Supreme Court were not in unison such that in the ***Lim case***, the prescriptive period was interrupted by the filing of the information in court, whereas in the ***Tupaz case***, the interruption occurs at the time of the filing of the complaint before the Department of Justice for preliminary investigation.

The Court, however, emphasizes that in 2005, or years after the promulgation of the ***Lim and Tupaz cases***, the ***Revised Rules of the Court of Tax Appeals*** was approved by the Supreme Court. ***Section 2, Rule 9*** thereof provides that the institution of the criminal action in court shall interrupt the running of the of the prescriptive period, 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.
>
> **<u>The institution of the criminal action shall interrupt the running of the period of prescription</u>**."
> (Emphasis and underscoring supplied.)

In the case at hand, the BIR claims in its Joint Complaint Affidavit[17] that the FLD, dated 23 October 2013, was served to accused by registered mail. No information was provided as to the date of service. On 27 May 2014, accused filed a protest letter. Accused then received the BIR's FDDA, dated 28 July 2015, on 5 August 2015.[18] Meanwhile, the Information was filed before the Court on 5 December 2022.[19] Indisputably, the five (5)-year prescriptive period has already lapsed.

The Court thus finds that the instant case should be dismissed on the ground of prescription.

WHEREFORE, premises considered, the Omnibus Motion is hereby **GRANTED**. Accordingly, the subject information is hereby **QUASHED**, and the case docketed as CTA Criminal Case No. O-972 is hereby **DISMISSED**.

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[17] Records, pp. 20-27.
[18] *Id.*, p. 54.
[19] *Id.*, p. 5.

Moreover, the return of the Warrant of Arrest, filed via registered mail on 24 April 2023, is hereby **NOTED**, and the same warrants are hereby **RECALLED**. Also, the return of the cash bail bond is hereby **ORDERED**. Finally, the Motion for Reduction of the Amount of Bail is hereby declared **MOOT and ACADEMIC**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice