REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST IVISION

CTA CRIM CASE NO. O-717

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

BONIFACIO CUSTODIO DEL ROSARIO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR SUSAN T. VILLANUEVA
Department of Justice
Padre Faura St., Ermita, Manila

COMMISSIONER OF INTERNAL REVENUE
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: Directorate for Investigation and Detective Management
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT & SUBPOENA SECTION
Manila Police District
United Nations Avenue, Ermita, Manila

GREETINGS:

You are hereby notified by these presents that on **February 19, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 20, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-717**
- versus -	Members:
BONIFACIO CUSTODIO DEL ROSARIO, Bonnie Del Rosario Caltex Services Station 2263-B Jose Abad Santos Street, Brgy. 227, Zone 21, District II, Tondo, Manila, Accused.	**DEL ROSARIO**, *P.J.*, Chairperson, **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.* Promulgated: FEB 19 2024 2:00PM

x - x

RESOLUTION

On April 29, 2019, an Information against accused, **BONIFACIO CUSTODIO DEL ROSARIO**, was filed before the Court, the accusatory portion of which reads:

> "That on or about June 2014, in Quezon City, and within the jurisdiction of this Honorable Court, accused **BONIFACIO CUSTODIO DEL ROSARIO**, required by law to file income tax return and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay **Value - Added Tax (VAT)** for taxable year 2010 in the amount of Nine Million Eight Hundred Seventy Seven Thousand One Hundred Fifty Five Pesos and Twenty Eight Centavos (P9,877,155.28), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2010, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on June 10, 2014, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**"[1]

[1] Docket, p. 8.

In a Resolution dated May 22, 2019, the Court found probable cause for the issuance of Warrant of Arrest against accused, and set the bail for his provisional liberty at ₱60,000.00.[2] Thus, on May 29, 2019, the Warrant of Arrest was issued.[3]

On July 31, 2019, the Court issued a Resolution[4] directing the Director of the National Bureau of Investigation (NBI), the Chief of the Philippine National Police (PNP) and the Chief of the Warrant and Subpoena Section, Manila Police District to submit their reports on the Warrant of Arrest.

On July 26, 2019, Special Investigator IV Nida P. Villanueva, Criminal Intelligence Division, NBI filed a Return of Warrant of Arrest, together with the original warrant, stating that accused cannot be found at the given address. With the return of the original Warrants, an Alias Warrant of Arrest was issued against accused on August 9, 2019.[5]

On March 9, 2020, the Court issued a Resolution[6] directing the Director of the NBI, the PNP Chief thru the Directorate for Investigation and Detective Management, and the Chief of the Warrant and Subpoena Section of the Manila Police District to submit their respective reports on the Alias Warrant of Arrest.

Subsequent actions and resolutions dealt with the Returns of Warrant of Arrest filed by the authorities, and the Court's order for the latter to enforce the outstanding Alias Warrant of Arrest issued on August 9, 2019.

On September 14, 2020, the Court issued a Resolution[7] archiving the case considering that more than six (6) months have lapsed from the time the Alias Warrant of Arrest was issued, and that accused still remained at large.

Meanwhile, the Court noted that several cases have been archived in view of the authorities' failure to cause the arrest of accused. The number of archived cases, as well as the successive dismissal of recent cases on the ground of prescription, prompted the Court to review such cases to determine whether they were filed within the prescribed period as provided under Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended.

[2] Docket, pp. 46-48.
[3] Docket, pp. 49.
[4] Docket, pp. 70-71.
[5] Docket, p. 75.
[6] Docket, pp. 100-101.
[7] Docket, pp. 135-136.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines* ("*Lim*"),[8] the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the wilful refusal to pay the taxes due within the allotted period, *viz.*:

> "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 <u>criminal informations</u>, having been filed on June 23, 1970, are well within the five-year prescriptive period and are not time-barred**." (*Boldfacing and underscoring supplied*)

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines* ("*Tupaz*"),[9] where it was held that the crime of wilful failure to pay tax, "by its nature[,] ... could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

Upon re-evaluation of the records, nothing in the Assessment Notices indicates the date when the accused received the same. Thus, pursuant to *Lim*, the accused cannot be charged with the crime of willful failure to pay tax, absent a showing that the accused actually received the notice.

As alleged in the Complaint-Affidavit filed by the revenue officer of the Bureau of Internal Revenue, the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) was "issued and served upon Mr. Del Rosario."[10] Nothing in the Complaint-Affidavit indicates how and when the FLD/FAN was served to accused.

Assuming that the date of issuance of the FLD/FAN, *i.e.*, **January 24, 2014**, is likewise the date of service thereof, the FLD/FAN would have attained finality upon the lapse of thirty (30) days from accused's receipt of said notice in accordance with Section 228 of the NIRC of 1997, as amended. Counting thirty (30) days from January 24, 2014, the FLD/FAN would have attained finality on February 23, 2014.

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[8] G.R. Nos. L-48134-37, October 18, 1990.
[9] G.R. No. 127777, October 1, 1999.
[10] Docket, p. 20.

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.
>
> 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."

Plaintiff had five (5) years from February 24, 2014, or until **February 23, 2019**, within which to **file the Information in court**. Again, the present Information was filed only on **April 29, 2019**, or more than 2 months beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "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.**" (*Boldfacing supplied*)

Under the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including those the commission of which are known, are not intended to be imprescriptible. If the prescription is interrupted when proceedings for preliminary investigation are instituted before the DOJ, it would mean that there is no timeline within which the Information must be filed in court. Effectively, the crime will never prescribe once a complaint is filed with the DOJ, which in turn is given the discretion when to act thereon, thereby allowing the potential use of the rule on prescription as a weapon to torment, harass and molest taxpayers suspected of committing a tax offense.

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. In a sense, it acts as check valve against unscrupulous public officials from abusing powers inherent in their position, including the not so improbable conduct of instituting vexatious, capricious and oppressive investigations.

It is the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[11] Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, premises considered, CTA Crim. Case No. O-717 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.

The Alias Warrant of Arrest issued against accused is hereby **RECALLED and SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[11] *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice