REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ARMANDO DAVID LAGAMSON,
(Golden Fortress Enterprise)
Between 10th and 11th Avenue, 5th Street, Brgy. 90, Caloocan City,
(AT-LARGE)
Accused.

CTA Crim. Case No. O-1004
(NPS Docket No. XVI-INV-19E-00197)

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
MAR 29 2023 , 1:29PM

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RESOLUTION

On January 13, 2023, the prosecution was ordered to submit an amended Information to address the discrepancy in the allegation of the deficiency value-added tax (VAT) and any proof of service and actual receipt of the Formal Letter of Demand and assessment notices (FLD/FAN) by the accused.

On January 27, 2023, the prosecution filed a *Manifestation*, stating that the proof that the final assessment and formal demand were sent to the accused is already part of the record. The prosecution also filed a *Motion for Leave to File/Admit the Amended Information*, which corrected the discrepancy between the amount in words and in numbers of the alleged VAT deficiency.

The *Manifestation* and the *Motion for Leave to File/Admit the Amended Information* are **NOTED**. The Amended Information is **ADMITTED**.

To recall, the offense charged in the subject Information involves the accused's alleged willful failure to pay deficiency

VAT. In jurisprudence,[1] the crime of willful failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

Absent any proof that the FLD/FAN was **actually received** by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the assessment, no violation of the 1997 National Internal Revenue Code (NIRC), as amended, has yet been committed.

Review of the FLD/FAN, which were issued on July 28, 2016, shows that the same was mailed to accused as shown in the registry receipt. 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.[2]

However, perusal of the records shows that there is no proof that said FLD/FAN was actually received by accused. Absent proof of receipt, the assessment could not have attained finality, and there is insufficiency of evidence to show that the accused sought to be arrested probably committed the crime charged.

Assuming *arguendo* that accused actually received the alleged FLD/FAN within the prescribed period, the case should still be dismissed on the ground of prescription.

Section 281 of the 1997 NIRC, 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

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[1] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*, G.R. No. L-48134-37, October 18, 1990 and *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777, October 1, 1999.

[2] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

> 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.

Examination of the FLD/FAN, dated July 28, 2016, shows that the same was mailed to accused on **August 1, 2016**.[3] The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[4] Even if the Court assumes that the FLD/FAN was received by accused thirty (30) days from its mailing, or on **August 31, 2016**, and no protest was filed within thirty (30) days from August 31, 2016, the assessment would have become final and executory on September 30, 2016. Plaintiff would have had five (5) years from September 30, 2016, or until **September 30, 2021**, within which to **file the Information in court**.

Here, while the Complaint-Affidavit was executed by the respective revenue officers and filed before the Department of Justice on May 23, 2019, which is within the 5-year prescriptive period, the corresponding Information was filed only on **December 6, 2022**, or way beyond the 5-year prescriptive period under Section 281 of the 1997 NIRC, as amended. As elucidated in *Lim, et al. v. Court of Appeals (Lim)*:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners only 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 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.[5]

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[3] Docket, p. 33.
[4] Philippine Postal Corporation, *Post Office Delivery Lead Time*, available at https://phlpost.gov.ph/postal-office-delivery-lead-time/, last accessed on February 21, 2023.
[5] G.R. No. L-48134-37, October 18, 1990.

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.** (*emphasis 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 5-year prescriptive period, thus, there is no interruption of said period.

Furthermore, the CIR's agents committed a mishap in the filing of this case. Section 220 of the 1997 National Internal Revenue Code (NIRC), as amended, states:

> Sec. 220. *Form and Mode of Proceeding in Actions Arising Under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.** (*emphasis ours*)

People of the Philippines v. Valeriano[6] clarified that the approval to file civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under the NIRC, may be delegated to the CIR's subordinates.

[6] G.R. No. 199480, October 12, 2016.

Significantly, *Dubongco, et al. v. Commission on Audit*[7] declared that "[a] cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the provisions are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. This is what is known as the plain meaning rule, as expressed in the maxim, *verba legis non est recedendum*, or from the words of the statute there should be no departure."

As it stands, Section 220 of the NIRC commands that approval of the CIR, or his duly authorized representative is a condition *sine qua non*, prior to the filing of an action for criminal infractions under the said Code.

Here, James L. Alberto,[8] Zenaida Tarroza and Mark Filmer T. Juan executed the Joint Complaint-Affidavit (JCA) on May 23, 2019. The Certification in the Department of Justice (DOJ) Investigation Data Form was likewise subscribed on May 23, 2019. However, the supposed authority to file criminal charges against accused Armando David Lagamson was issued by then CIR Caesar R. Dulay on May 21, 2019. Indeed, how can the CIR evaluate and approve the JCA on May 21, 2019, when the said JCA was executed only on May 23, 2019? This observation yields a single conclusion – the JCA filed before the DOJ, leading to the filing of the present case, has no prior permission from the CIR.

Based on all the foregoing, the Court finds no probable cause for the issuance of the warrant of arrest.

WHEREFORE, the instant Information and Amended Information, docketed as CTA Crim. Case No. O-1004, are hereby **DISMISSED** for failure of the evidence on record to establish probable cause and by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[7] G.R. No. 237813, March 5, 2019.
[8] In the Court's records, James L. Alberto did not sign the JCA.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice