REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FAIVO PASCUAL BARTOLOME
Accused.

CTA CRIM. CASE NO. O-926

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated: OCT 01 2024

10:42 a.m.

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RESOLUTION

For resolution is the "Demurrer to Evidence"[1] filed by accused Faivo Pascual Bartolome (accused Bartolome), praying that the case against accused be dismissed.

The plaintiff filed its "Comment/Opposition [Re: Accused's Demurrer to Evidence dated June 28, 2024)" on July 8, 2024.

Accused was charged with the crime of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "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 Income Tax for the taxable year 2010, in the amount of Four Million Eight Hundred Three Thousand Seven Hundred Fifty One and 23/100 (P4,803,751.23), exclusive of increments, 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,

[1] Docket, pp. 323-329.

2014 issued by the Bureau of Internal Revenue, to the damage and prejudice of the Government.

CONTRARY TO LAW."[2]

During the arraignment on March 29, 2023,[3] accused assisted by his counsel, entered a plea of not guilty to the crime charged.

The Court issued a Pre-Trial Order on September 5, 2023.[4] On September 19, 2023, the Court issued an Order supplementing the Pre-Trial Order.[5]

On March 8, 2024, plaintiff filed its "Formal Offer of Evidence."[6]

On April 26, 2024, the Court issued a Resolution[7] on plaintiff's Formal Offer of Evidence.

On May 9, 2024, accused Bartolome filed a "Motion for Leave to File Demurrer to Evidence."[8]

On June 4, 2024, petitioner filed its "Comment/Opposition [Re: Motion for Leave to File Demurrer to Evidence dated May 9, 2024]."[9]

On June 28, 2024, accused Bartolome filed his "Demurrer to Evidence."[10]

On July 8, 2024, petitioner filed its "Comment/Opposition [Re: Accused's Demurrer to Evidence dated June 28, 2024]."

On July 16, 2024, the Court issued a Minute Resolution submitting for resolution the "Demurrer to Evidence."

BASIS FOR FILING THE DEMURRER TO EVIDENCE

The "Demurrer to Evidence" was based on the ground of prescription, pursuant to Article 89 of the Revised Penal Code.

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[2] Information, Docket, pp. 5-6.
[3] Docket, pp. 158-159.
[4] Docket, pp. 190-194.
[5] Docket, pp. 200-201.
[6] Docket, pp. 218- 230.
[7] Docket, pp. 301-302.
[8] Docket, pp. 306-310.
[9] Docket, pp. 313-319.
[10] Docket, 323-329.

EVIDENCE PRESENTED BY PLAINTIFF

During trial, the prosecution presented Revenue Officers Ericka Joy DC Placido,[11] Geraldine Q. Carpizo[12] and Faustino B. Lumabao, Jr.[13] as witnesses to establish the case against accused.

The documentary evidence admitted pursuant to the Court's Resolution dated August 9, 2017 are the following:

Exhibit	Description
P-1	BIR Integrated Tax System (ITS) printout of accused
P-2	Letter of Authority (LOA) No. LOA-001-2021-00000037 (SN: eLA201000010748) dated March 19, 2012
P-3	Checklist of Requirements for Presentation for Audit
P-4	First Notice dated June 8, 2012
P-5	Second and Final Request for Presentation of Records dated June 20, 2012
P-6	Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC dated December 5, 2023
P-7	Preliminary Assessment Notice (PAN) dated October 27, 2014
P-8	Details of Discrepancies attached to the PAN
P-9	Schedule of Deficiency Taxes Computations for taxable year 2010 attached to the PAN
P-10	Memorandum Report dated October 29, 2014 of the Proof of Service of the PAN
P-11	Formal Letter of Demand (FLD) dated November 17, 2014
P-12	Details of Discrepancies attached to the FLD
P-13	Schedule of Deficiency Taxes Computations for taxable year 2010 attached to the FLD
P-14	Audit Results/Assessment Notice Nos. IT-ELA10748-01-10- 129-864-120/ VT-ELA10748-01-10- 129-864-120/ DS-ELA10748-01-10- 129-864-120/ WE-ELA10748-01- 10-129-864-120/ RF-ELA10748-01-10- 129-864-120/ MC-ELA10748-01-10- 129-864-120, consisting of six (6) pages

[11] Judicial Affidavit, Docket, pp. 106-116.
[12] Judicial Affidavit, Docket, pp. 128-134.
[13] Judicial Affidavit, Docket, pp. 119-125.

P-15	Memorandum Report of Proof of Service of the FLD and Audit Results/Assessment Notices dated November 21, 2014
P-16	1st Notice dated May 14, 2015
P-17	Registry Return Receipt dated June 10, 2015
P-18	Final Notice dated July 30, 2015
P-19	Registry Return receipt dated August 4, 2015
P-20	Warrant of Distraint and/or Levy (WDL) dated August 16, 2016
P-21	Referral Letter dated October 10, 2018
P-22	Investigation Data Form with attached Joint Complaint-Affidavit dated October 12, 2018 of Lourdes P. Anteneo, Elma L. Gutierrez and Faustino B. Lumabao, Jr.
P-23, P-23-a	Judicial Affidavit and signature of Ms. Eika Placido
P-24, P-24-a	Judicial Affidavit and signature of Ms. Geraldine Carpizo
P-25, P-25-a	Judicial Affidavit and signature of Atty. Faustino Lumabao Jr.

ALLEGATIONS OF THE PARTIES

Accused claims that the criminal liability is extinguished by prescription of the crime. Based on the evidence presented by the plaintiff, the FLD dated November 17, 2014 was received by accused on November 20, 2014 while the Final Notice dated July 30, 2015 was received by accused Bartolome on August 4, 2015. The five-year prescriptive period began to run when the assessment became final on September 4, 2015 after the lapse of the period to file a valid protest. The Information was filed only on September 6, 2022 or more than seven (7) years after the assessment became final. Hence, the case against accused Bartolome was instituted beyond the five (5)-year prescriptive period.

In its Comment/Opposition [Re: Accused's Demurrer to Evidence dated June 28, 2023], plaintiff claims that the filing of the Joint Complaint Affidavit before the DOJ for Preliminary Investigation on October 12, 2018 interrupted the running of prescription. The five-year prescriptive period commenced on December 20, 2014, when the assessment against accused Bartolome became final and executory, and when the complaint for preliminary investigation was filed with the Department of Justice on October 12, 2018, the criminal action was clearly instituted within the five (5)-year prescriptive period.

RULING OF THE COURT

Rule 33 of the Rules of Court provides:

> "**Section 1.** ***Demurrer to evidence.*** – After the plaintiff has completed the presentation of his evidence, the defendant may move for the dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.[14]

Section 255 of the NIRC of 1997 as amended, states that:

> "**Sec. 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 laws 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 (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact failed a return or statement, actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000.00) but not more than Twenty thousand pesos (P20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

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[14] Soriquez vs. Sandiganbayan, G.R. No. 153526, October 25, 2005, citing Gutib vs. Court of Appeals, G.R. No. 131209, August 13, 1999.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. 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 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.[15]

Article 89 of the Revised Penal Code provides:

> Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
> 2. By service of the sentence;
> 3. By amnesty, which completely extinguishes the penalty and all its effects;
> 4. By absolute pardon;
> 5. **By prescription of the crime;**
> 6. By prescription of the penalty;
> 7. By the marriage of the offended woman, as provided in Article 344 of this Code. *(Emphasis supplied)*

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

> "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.
>
> Prescription shall begin to run from the day the commission of the violation of the law, and if the same be now 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."

[15] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

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.[16]

As regards the first consideration, the prescriptive period for tax offenses punishable under the NIRC of 1997, 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 offence, or from discovery thereof and institution of judicial proceedings for its investigation and punishment.

The commencement of the prescriptive period as provided in the above-cited provision (priorly Section 354 of the Old Tax Code) was interpreted by no less than the Supreme Court in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[17] *(Lim Case)* in the following manner, to wit:

> "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:
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> '(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 deficiency in tax so*

[16] Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et. Al., G.R. No. 127777 October 1, 1999.
[17] G.R. Nos. L-48134-37, October 18, 1990.

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."

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 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. (Rules of Court, Rule 110, sec. 2a; n)

Based on the foregoing, the date of commission of the violation is a significant event in the prosecution of any violation of the Tax Code. <u>It was observed that as long as the period from the day of the commission or discovery of the violation up to the filing of the Information in Court does not exceed 5 years, the government's right to file a criminal action does not prescribe</u>. Conversely, if the period from the commission or discovery up to the filing of the information in court exceeds 5 years, then the government's right to file an action has prescribed.

Records show that accused Bartolome is registered with BIR Revenue District Office No. 1 – Laoag City. He was issued Tax Identification Number 129-864-120. He is engaged in the business of computer sales and services. The main business office address of accused Bartolome is located at 22 M.J. Guerrero St., Brgy. 21, Laoag City, Ilocos Norte.[18]

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[18] BIR Integrated Tax System Printout, Docket, pp. 231-232; Joint Complaint-Affidavit, Docket, p. 29.

On March 19, 2012, e-Letter of Authority (e-LOA) No. 201000010748[19] was issued to respondent authorizing Revenue Officer Erika Joy Placido and Group Supervisor Jocelyn Ramilo to examine the books of accounts and other accounting records for all internal revenue taxes of accused Bartolome for the period from January 1, 2010 to December 31, 2010. Accused received the said e-LOA on March 21, 2012.

Thereafter, the PAN was issued on October 27, 2014.[20] It was received by accused Bartolome on October 29, 2014.

Considering that no reply was filed by accused Bartolome within fifteen (15) days from receipt of the PAN, the BIR issued the FLD and Assessment Notices[21] dated **November 17, 2014**. The FLD was personally served to accused Bartolome on **November 20, 2014**.

Subsequently, on December 11, 2014, accused Bartolome filed before the BIR-Regional Office, Calasiao, Pangasinan, a request for reinvestigation for the re-evaluation of his tax liabilities. His request was granted and he was required to submit relevant supporting documents in support of his protest, within sixty (60) calendar days from the date of the filing of his protest. However, instead of submitting supporting documents in relation to his protest, accused Bartolome filed a letter on January 23, 2015, invoking the defense of prescription and moved for the cancellation of the assessment for lack of legal basis. In reply thereto, Revenue District Officer Simplicio V. Cabantac, Jr. wrote a letter to accused Bartolome dated **January 28, 2015**, stating that the 2010 tax liabilities of accused was assessed within the prescriptive period because of the Waiver of the Defense of Prescription was executed on December 5, 2013.[22]

Then on **May 14, 2015**, Revenue District Officer Simplicio V. Cabantac, Jr. issued to accused Bartolome the 1st Notice,[23] which was sent to accused Bartolome through registered mail, informing the latter that he still has an outstanding tax liability in the amount of P10,524,700.98, representing Income, Value-Added, Documentary Stamp, Expanded Withholding, Registration Fee, Miscellaneous Taxes for the year 2010. *Sans* payment thereof by accused Bartolome, the Final Notice[24] was issued to accused Bartolome on **July 30, 2015** by registered mail. The Final Notice was received by accused on **August 4, 2015**.[25]

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[19] Docket, p. 233.
[20] Docket, pp. 238-240.
[21] Docket, pp. 244-246, 249.
[22] Joint Complaint-Affidavit, Docket, p. 31.
[23] Docket, p. 256.
[24] Docket, p. 259.
[25] Docket, pp. 260-261.

Since accused Bartolome failed to pay his deficiency tax liability, the BIR issued on August 16, 2016 the WDL.[26] It was served on November 18, 2016 to Sheryl Fernandez, staff/cashier of accused Bartolome.

The Joint Complaint-Affidavit[27] of Revenue Officers Lourdes P. Anteneo, Elma L. Gutierrez and Faustino B. Lumabao, Jr. was executed on **October 12, 2018**.

Plaintiff instituted the criminal complaint against accused by filing the Joint Complaint-Affidavit and the Referral Letter[28] with the Department of Justice on **October 12, 2018**. On **October 4, 2019**, Assistant State Prosecutor Jovyanne E. SantaMaria issued a Resolution[29] finding probable cause to indict accused Bartolome for alleged violation of Section 255 of the NIRC of 1997, as amended. Accused Bartolome filed a Motion for Reconsideration[30] on March 5, 2020. On **October 8, 2020**, Assistant State Prosecutor Jovyanne E. SantaMaria issued the Resolution (On the Motion for Reconsideration).[31] The Information dated **October 23, 2019** was subscribed before Assistant State Prosecutor Amanda A. Felipe on **December 18, 2019**. The Information[32] was filed before this Court on **September 6, 2022**.

Pertinent portions of the Final Notice[33] dated July 30, 2015 states as follows:

> "Previous to this communication, collection letters were mailed to you covering this liability, unfortunately, you did not favor us with a reply.
>
> Ten (10) working days from receipt hereof, if we do not hear from you, this Office will proceed with the Collection of Summary Remedies in accordance with the provisions of Section Nos. 205, 206 and 207 respectively, of the National Internal Revenue Code as amended, through WARRANT OF DISTRAINT AND/OR LEVY on your properties and/or WARRANT OF GARNISHMENT on your bank accounts and/or endorse the case for court action.
>
> Payment in full plus legal increments incident to late payment must be made to this Office, Revenue District No. 1. Laoag City, or to the Office of the Revenue Collection Officer nearest your place, on/or before the expiration of the grace period of ten (10) working days granted to you.

[26] Docket, p. 262.
[27] Docket, pp. 28-35.
[28] Docket, pp. 26-27.
[29] Docket, pp. 18-24.
[30] Docket, pp. 11-16.
[31] Docket, pp. 8-10.
[32] Docket, pp. 5-7.
[33] Docket, p. 259.

> HOWEVER, if you have already paid the above-mentioned tax liability, please confirm the payment by presenting and/or furnishing this Office photocopy of the original Payment Form (BIR Form 0605) and the Revenue Official Receipt as evidence of actual payment, for our information and guidance.
>
> Please advise us promptly."

The tax offense in this case was ***committed*** on **August 14, 2015**. It is the 10th day after accused Bartolome received the Final Notice dated July 30, 2015. It is at this point in time when accused already knew that he needed to pay the assessed tax liability but he failed to pay. Counting from August 14, 2015, the five (5) year prescriptive period to indict accused Bartolome for failure to pay the assessed Income Tax liability lapsed on **August 14, 2020**. Thus, the right of the government to institute the subject case against accused has 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 the Court, within the five-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, renders the instant case dismissible on the ground of prescription.

In view of the foregoing discussions, the instant case is considered terminated.

WHEREFORE, premises considered, the "Demurrer to Evidence" is **GRANTED**. Accordingly, the instant case against accused **FAIVO PASCUAL BARTOLOME** is **DISMISSED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice