REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GH RESOURCES AND TRAINING SERVICES, INC.,
4757-B Barasoain St., Brgy. Olympia, Makati City

GRACE H. CARTAGO,
(President)
4757-B Barasoain St., Brgy. Olympia, Makati City
(At-Large)
Accused.

CTA CRIM. CASE NO. O-818
For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended.

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 01 2020

8:55 a.m.

x - x

RESOLUTION

Records show that on February 26, 2020, the prosecution filed the Information against herein accused for violation of Section 255, in relation to Sections 253(d) and 256, of the National and Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about 28 March 2011, and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused, **GH RESOURCES AND TRAINING**

SERVICES, INC., a domestic corporation, **GRACE H. CARTAGO**, being its president, required by law to file withholding tax return at the time or times required by law, rules or regulations and to pay the corresponding tax, as provided under the NIRC of 1997, as amended, did then and there wilfully, unlawfully and feloniously fail to pay **the withholding tax on compensation** for taxable year 2007 in the amount of Two Million Five Hundred Sixty Two Thousand four Hundred Seventy Three Pesos and Seventy Eight Centavos (P2,562,473.78), exclusive of surcharges and interests, despite receipt of final assessment notices, including prior and post notices and final demands to pay the last being in the form of the final collection letter issued on March 28, 2011, to the damage and prejudice of the government.

CONTRARY TO LAW."

Pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[1] the Court shall determine the existence or non-existence of probable cause.

Corollary thereto, the prosecution presented Certified True Copies of the following supporting documents for the examination of the Court:

1. Resolution dated October 21, 2019, signed by Assistant State Prosecutor Susan T. Villanueva, Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and Prosecutor General Benedicto A. Malcontento;

2. Investigation Data Form with NPS Docket Number XVI-INV-19E-00176;

3. Referral letter dated May 17, 2019; and

[1] SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

4. Joint Complaint-Affidavit of Revenue Officers Aurah Minah M. Saripada and Marcelo A. Blancaflor, with attached annexes.

After a careful consideration of the allegations in the Information and personally examining and evaluating the supporting documents submitted, the Court finds that the right to institute the criminal action has already prescribed.

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

Relevantly, Section 281 of the 1997 NIRC, as amended, states:

> "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."(Emphasis supplied)

The above provision is clear that the period of prescription for the offense charged is five years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery

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[2] *Romualdez vs. Marcelo, et al.,* G.R. Nos. 165510-33, July 28, 2006.

thereof and the institution of judicial proceedings for its investigation and punishment.

Relevantly, in the case of *Tupaz vs. Ulep*[3], which similarly involves the offense of failure to pay tax despite demand, the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

> "Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period." (Emphasis supplied)

Based on the allegation in the Information and its supporting documents, the Final Assessment Notice (FAN) was issued on December 16, 2010 and became final and executory, and demandable after the accused failed to file its protest. Hence, the assessment attained finality on January 15, 2011. Furthermore, the supporting documents attached to the Information show that after the issuance of the Preliminary Collection Letter dated March 15, 2011, the complainant Bureau of Internal Revenue (BIR) subsequently issued the Final Collection Letter dated March 28, 2011,

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

indicating that the accused still refused to pay despite demand. Clearly, when the referral letter and complaint affidavit for preliminary investigation was filed before the Department of Justice on May 17, 2019, and the Information was later filed before this Court on February 26, 2020, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, had already lapsed.

WHEREFORE, CTA Criminal Case No. O-818 is **DISMISSED** on the ground of prescription.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice