19-000323-0015

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NOS. O-758 & O-759

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ABUBAKAR YSMAEL AZIZ
(Proprietor of YSMABAZ IMPORTER AND GEN. MDSE.),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. DEPUTY STATE PROS. RICHARD ANTHONY FADULLON
Department of Justice
Padre Faura Street, Ermita
1000 Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGen Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT & SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman
Quezon City

GREETINGS:

You are hereby notified by these presents that on **August 15, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 16, 2024.**

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

REPUBLIC OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ABUBAKAR YSMAEL AZIZ (Proprietor of YSMABAZ IMPORTER AND GENERAL MERCHANDISE),
Accused.

CTA Crim. Case Nos. **O-758** and **O-759**

For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
AUG 15 2024; 1:50PM

x - x

RESOLUTION

Subject of the Court's periodic review of archived cases are the consolidated cases of CTA Criminal (**Crim.**) Case Nos. O-758 and O-759 similarly entitled *"People of the Philippines v. Abubakar Ysmael Aziz (Proprietor of Ysmabaz Importer and General Merchandise)"*.

As background, on 16 July 2019, plaintiff filed two (2) Informations[1] against herein accused **ABUBAKAR YSMAEL AZIZ** (Proprietor of Ysmabaz Importer and General Merchandise) (**accused/Aziz**), for violation of Section 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. One Information was docketed as CTA Crim. Case No. O-758 and was raffled to the Second

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[1] Crim. Case No. O-758, Division Docket, pp. 8-10; Crim. Case No. O-759, Division Docket, pp. 8-10.

[2] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — ...

Division[3], while the other Information was docketed as CTA Crim. Case No. O-759 and was raffled to the Third Division.[4]

In a Resolution dated 31 July 2019[5], for Crim. Case No. O-758, the Second Division found probable cause and ordered the issuance of a Warrant of Arrest[6] (**WOA**) against accused Abubakar Ysmael Aziz. It also fixed the bail bond for his provisional liberty in the amount of ₱20,000.00. However, on 10 September 2019, the Court received an Officer's Return of WOA[7] which indicated that accused Aziz could not be found or located at his given address. Thus, the Second Division issued an Alias WOA on 13 September 2019.[8]

As for Crim. Case No. O-759, in a Resolution dated 30 July 2019[9], the Third Division found an inconsistency in the amount of deficiency value-added tax (**VAT**) between the Information and in the supporting documents. Thus, it directed plaintiff to rectify the Information. On 10 September 2019, plaintiff simultaneously filed (through registered mail) a "Motion to Admit Attached Amended Information"[10], to correct the discrepancy in the Information; and a "Motion for Consolidation"[11], to consolidate Crim. Case No. O-759 with Crim. Case No. O-758 on the sole ground that the cases were closely related with one another.

In a Resolution dated 26 September 2019[12], the Third Division admitted the Amended Information and granted the consolidation of Crim. Case No. O-759 with Crim. Case No. O-758, subject to the Second Division's conformity. Without objection from the Second Division, the two (2) cases were consolidated.[13]

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3 The Second Division was then composed of Associate Justice Juanito C. Castañeda, Jr. (ret.) as chairperson, Associate Justice Cielito N. Mindaro-Grulla (ret.) and Associate Justice Jean Marie A. Bacorro-Villena as members.

4 The Third Division was then composed of Associate Justice Erlinda P. Uy (ret.) as chairperson, Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro as members.

5 Crim. Case No. O-758, Division Docket, pp. 49-50.

6 Id., p. 51.

7 Id., p. 53.

8 See Resolution dated 13 September 2019, id., p. 56; Alias Warrant of Arrest, id., p. 57.

9 Crim. Case No. O-759, Division Docket, pp. 49-52.

10 Received by the Court on 16 September 2019, id., pp. 55-60.

11 Received by the Court on 16 September 2019, id., pp. 61-62.

12 Id., pp. 70-71.

13 See Resolution dated 28 October 2019, Crim. Case No. O-758, Division Docket, p. 70.

Thereafter, on 11 November 2019, the Second Division found probable cause to issue a WOA[14] in Crim. Case No. O-759 and thus ordered its issuance. It also fixed the bail bond at ₱60,000.00.[15] Later, the Court received another Officer's Return (of the WOA) on 16 January 2020[16], and thus an Alias WOA[17] was issued.

On 16 November 2020, without any report on the accused's apprehension[18], the Second Division ordered that the consolidated cases be archived, without prejudice to the revival thereof should accused Aziz be apprehended.[19]

On 18 May 2021, Special Investigator (**SI**) Eric M. Bringas of the National Bureau of Investigation (**NBI**) submitted to the Court a Return of WOAs[20] for both Crim. Case Nos. O-758 and O-759 and declared that accused Aziz was never seen nor found at the stated address of 252 Zuzuaregui St. Old Balara, Quezon City. Also, on 02 September 2021, Agent III Baldomero T. Katigbak, Jr. submitted to the Court a Return of the Alias WOA[21] for Crim. Case No. O-758, on the same ground that accused Aziz was nowhere to be found in the stated address and a different business entity was occupying the same.

On 23 June 2023, the subject cases were transferred to the First Division pursuant to the Court's reorganization under Administrative Circular No. 01-2023.[22] In an effort to speedily dispose the cases and to de-clog court dockets, an inventory of the archived cases was held.

We proceed.

To recall, accused Aziz (and accused Corporation) was charged of willful failure to pay deficiency income tax and VAT despite due notice and demand. The Information for Crim. Case No. O-758 and the Amended Information for Crim. Case No. O-759 read as follows:

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14 Id., pp. 72-73.
15 Crim. Case No. O-759, Division Docket, p. 72.
16 Id., p. 74.
17 See Resolution dated 22 January 2020, id., p. 77; Alias Warrant of Arrest, id., p. 78.
18 See Records Verification dated 05 November 2020, Crim. Case No. O-758, Division Docket, p. 74
19 See Resolution dated 16 November 2020, id., p. 76.
20 Id., pp. 78-81.
21 Received by the Court on 08 October 2021, id., pp. 84-86.
22 See Minute Resolution dated 29 May 2023, id., p. 88.

<u>For O-758</u>

. . .

"That on or about April 30, 2014 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of YSMABAZ IMPORTER AND GENERAL MERCHANDISE with business address at No. 252 Zuzuaregui St., Old Balara, Quezon City, did then and there, willfully, unlawfully and feloniously fail to pay deficiency Income tax with the Bureau of Internal Revenue for the taxable year 2007, despite final assessment notice, including prior and post notices and final demands to pay, the last being the Demand Before Suit (DBS) sent on April 30, 2014, to the damage and prejudice of the Government, in the amount of **Twenty Three Million Four Hundred Thirty Three Thousand Eight Hundred Ten Pesos (₱23,433,810.00)**, exclusive of surcharges and interests.

CONTRARY TO LAW."

. . .

<u>For O-759</u>

. . .

"That on or about April 30, 2014 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of YSMABAZ IMPORTER AND GENERAL MERCHANDISE with business address at No. 252 Zuzuaregui St., Old Balara, Quezon City, did then and there, willfully, unlawfully and feloniously fail to pay deficiency Value Added Tax with the Bureau of Internal Revenue for the taxable year 2007, despite final assessment notice, including prior and post notices and final demands to pay, the last being the Demand Before Suit (DBS) sent on April 30, 2014, to the damage and prejudice of the Government, in the amount of **<u>Seventeen Million Six Hundred One Thousand Six Hundred Seven Pesos and Twenty Eight Centavos (₱17,601,607.28)</u>**, exclusive of surcharges and interests.

CONTRARY TO LAW."

. . .

For both Informations, plaintiff attached the following supporting documents:

1) Certified True Copy of the Resolution dated 18 May 2017, signed by Senior Assistant State Prosecutor Juan Pedro C. Navera, with recommending approval of Senior Deputy State

Prosecutor Miguel F. Gudio, Jr., and approved by Senior Deputy State Prosecutor Richard Anthony D. Fadullon;[23]

2) Certified True Copy of the National Prosecution Service Investigation Data Form subscribed and sworn on 22 May 2014;[24]

3) Certified True Copy of the Referral Letter dated 22 May 2014 of the Bureau of Internal Revenue (**BIR**) Commissioner Kim S. Jacinto-Henares, addressed to Secretary of Justice Leila De Lima[25]; and,

4) Certified True Copy of the Joint Complaint-Affidavit dated 22 May 2014[26] of Revenue Officers (**ROs**) Geraldine D. Llaguno (**Llaguno**), Cristy E. Rejuso (**Rejuso**) and Maribel RL. Callao (**Callao**), with attached Annexes "A" to "N", inclusive of sub-markings.[27]

Upon a second hard look and evaluation of the allegations in the Informations and the supporting documents[28] submitted, this Court finds that the right to institute the criminal actions has already prescribed.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[29] (**Lim**), 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 willful 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 allot[t]ed period. The two <u>criminal informations</u>, having been filed on June 23,**

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23 Crim. Case No. O-758, Division Docket, pp. 11-15.
24 Id., p. 16.
25 Id., pp. 17-18.
26 Id., pp. 19-25.
27 Id., pp. 26-47.
28 Supra at notes 23 to 27.
29 G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

> **1970, are well-within the five-year prescriptive period and are not time-barred.**
>
> . . .

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[30] (**Tupaz**), where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> . . .
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. 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.** ...
>
> . . .

Here, in both cases, the records show that the BIR issued a Final Assessment Notice (**FAN**) dated 22 November 2010[31] with attached Details of Discrepancies[32], and Assessment Notices[33] (**ANs**) against accused Aziz. Without any contrary or countervailing evidence showing otherwise, accused presumably received the FAN and ANs on even date. Considering that accused had thirty (30) days to file a protest to the FAN (pursuant to Section 228[34] of the NIRC of 1997, as amended), accused had until 22 December 2010 to do so. However, based on the records, accused Aziz failed to file a protest. Thus, the FAN became final and unappealable on **23 December 2010**. On such date, the offense is "committed" for purposes of the five (5)-year prescriptive period.

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[30] G.R. No. 127777, 01 October 1999; Citation omitted, emphasis supplied and italics in the original text.
[31] Annex "I", Crim. Case No. O-758, Division Docket, pp. 36-37.
[32] Id., p. 38.
[33] Annexes "I-1" to "I-2", id., pp. 39-40.
[34] **Section 228**. *Protesting of Assessment*. – ...

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
>
> **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.[35]
>
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to when 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 thereof and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[36] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

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35 Emphasis supplied and italics in the original text.

36 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

In the case of *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years, *viz*:

> ...
>
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
>
> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**
>
> ...
>
> **Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[37]
>
> ...

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[37] Supra at note 29; Citation omitted, emphasis supplied and italics in the original text.

Plaintiff had five (5) years from 23 December 2010 (*i.e.*, the day after the deadline for filing a protest against the FAN and ANs), or until **22 December 2015**, within which to file the Informations in court. Since the subject Informations were filed only on **16 July 2019**, the criminal action had already *been prescribed for three (3) years, seven (7) months, and twelve (12) days* from **22 December 2015** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal actions has already prescribed.

Relevantly, Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals[38] (**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.**[39]
>
> . . .

Verily, pursuant to 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 known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the Department of Justice (**DOJ**), it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially

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[38] A.M. No. 05-11-07-CTA.
[39] Emphasis supplied and italics in the original text.

allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[40]

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.[41]

Again, given that the Informations[42] herein were filed on **16 July 2019**, or beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **22 December 2015**, plaintiff's right to file these cases against the named accused had already expired at the time of their filing in court.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[43] Evidently, in this case, prescription has automatically set in when plaintiff failed to file the Informations within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also 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.[44] Here, the circumstances show that the crimes have prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, in light of the foregoing considerations, the consolidated CTA Crim. Case Nos. O-758 and O-759 are hereby **DISMISSED** by reason of prescription of the offenses charged.

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40 See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
41 Id.
42 Supra at note **Error! Bookmark not defined.**.
43 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.
44 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
LANEE S. CUI-DAVID
Associate Justice