REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-1140** (NPS NO: XV-05-INV-23K-3512)
-versus-	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
POLYSTAR PHILIPPINES CORPORATION 4th Floor Low Rise Pacific Star, Sen. Gil Puyat Avenue, Makati City	
BETTY SISON HUANG (2308 Taft Avenue, Pasay City),	**Members:**
HONG ZHENG (F070 Otis 888 Residences Faz M. Guanzon St., Paco Manila), and	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
MARIA FE BANGAAN RAYALA (1058-F. Banawe St., corner Mauban, Barangay Manresa, Quezon City), *Accused.*	**Promulgated:** FEB 0 5 2025

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RESOLUTION

On May 10, 2024, the Court issued a *Resolution*, which ordered plaintiff to amend the *Information* filed on April 8, 2024 in order to implead *Polystar Philippines Corporation*, within five (5) days from notice. A copy of the resolution was served upon both counsels from the Office of the City Prosecutor, Makati City, on May 23, 2024,[1] and from the Litigation Division of the Bureau of Internal Revenue (BIR) *National Office*, on May 27, 2024. Accordingly, plaintiff had until June 3, 2024 to comply, at the latest.

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[1] *Notice of Resolution*, Docket, p. 90.

On June 19, 2024,[2] counsels from the Legal Division of the BIR, Revenue Region No. 8 *belatedly* filed a *Motion to Admit Amended Information with Entry of Appearance.*

On August 5, 2024, the Court issued a *Resolution*, which noted that there is *substantial difference* between the total amount due for income tax in the *Formal Assessment Notice* (FAN), which is PhP28,096,320.76, and in the *Amended Information*, which states only PhP28,096.76. The Court also observed that while the BIR clearly recommended criminal charges for violation of Section 255, in relation to Sections 253(d) and 256 of the 1997 NIRC), as amended, the *Amended Information* only cited Section 255 as basis. Thus, to sufficiently inform *all* the accused of the charges against them, as required in the Constitution, plaintiff was *ordered* to make the necessary corrections, within five (5) days from notice. Plaintiff was also reminded to comply with the order *within the stated deadline.* Copies of the resolution were served upon the Office of the City Prosecutor and the BIR.[3]

On September 20, 2024, the Court's record verification reported that no compliance was filed pursuant to the August 5, 2024 *Resolution.*[4]

Accordingly, on October 29, 2024, the Court again issued a *Resolution* giving the plaintiff *one last opportunity* to comply with the August 5, 2024 *Resolution*, *within five (5) days from notice.* Counsels from both the Department of Justice and the BIR received copies of the resolution on November 11 and 12, 2024, respectively.[5] Thus, plaintiff had, *at the latest*, until November 17, 2024 to abide by the Court's order.

Again, for the *third time*, plaintiff disregarded the Court's deadline despite due notice and fair warning. Without so much as an explanation, plaintiff only filed an *Amended Information* via email on November 19, 2024 and by registered mail the following day --- more than three months since it received the August 8, 2024 *Resolution.*[6]

A year has almost lapsed since the original *Information* was filed on April 8, 2024. Due to certain deficiencies, the Court has already allowed plaintiff to amend the *Information* without prejudice to the continued prosecution of the case. The Court had been nothing short of *lenient* by conceding several opportunities for the plaintiff to correct the deficiencies and has spent considerable amount of time and resources in the process. In spite of these, plaintiff has again failed to comply. For this reason alone, the Court has had enough basis to dismiss the case for plaintiff's failure to prosecute.[7]

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[2] Docket, pp. 95-98.
[3] Docket, pp. 193 & 194.
[4] Docket, p. 201.
[5] *Notice of Resolution* dated October 29, 2024, Docket, p. 202.
[6] *Notice of Resolution* dated August 5, 2024, Docket, pp. 193 and 194.

[7] RULE 17 DISMISSAL OF ACTIONS. **Section 3.** *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his or her evidence

However, more important than the consideration above, the Court again reviewed the facts and concludes that the crime charged in the *Information* is already *barred by the five-year prescription* under Section 281 of the National Internal Revenue Code of 1997 (1997 NIRC):

> "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."

In resolving the issue of prescription of the offense charged under Section 281, the Court should consider the following specifics: (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.[8]

First, in Section 281, the law supplies the period of prescription for offenses charged under the 1997 NIRC, as amended, which is five (5) years. *Second*, the time when prescription will begin depends on either of two instances:

- If the day of the commission of the crime is known, prescription begins from the day of the commission; *or*,

- If the day of the commission of the crime is *not* known, prescription begins from the discovery of its commission *and* the institution of judicial proceedings for its investigation and punishment.

Third, the running of the prescriptive period is interrupted when the *judicial* proceedings are instituted against the accused in either of these instances.[9]

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in chief on the complaint, or to prosecute his or her action for an unreasonable length of time, <u>or to comply with these Rules or any order of the court</u>, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[8] *Romualdez v. Marcelo*, G.R. No. 165510-33, July 28, 2006 citing the case of *Domingo v. Sandiganbayan*, G.R. No. 109376, January 20, 2000.
[9] *People of the Philippines v. Wintelecom, Inc. / Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090 (CTA Crim. Case Nos. O-800 & O-801), June 21, 2023.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines* (Lim),[10] for purposes of fixing when the prescription will start for the crime of refusal to pay deficiency taxes due,[11] the Supreme Court held that the crime could only be committed *after* service of notice and demand for payment of the deficiency taxes upon the taxpayer. Thus:

> "Relative to Criminal Cases 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.
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> 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 or deficiency in tax so discovered shall be paid upon*

[10] G.R. No. L-48134-37, October 18, 1990.

[11] Under the 1939 National Internal Revenue Code (NIRC):

Section 73. *Penalty for failure to file return or to pay tax.* — Anyone liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both.

Any individual or any officer of any corporation, or general co-partnership ..., required by law to make, render, sign or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this Code to be made, shall be punished by a fine of not exceeding four thousand pesos or by imprisonment for not exceeding one year, or both.

Under the 1997 NIRC

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 correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law 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 (P 10,000) 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 filed a return or statement, or 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 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 (P 10,000) but not more than Twenty Thousand Pesos (P 20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

> *notice and demand from the Commissioner of Internal Revenue.'* (Emphasis supplied)
>
> 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 wilful 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." (*Underscoring supplied*)

Subsequently, in *Tupaz v. Ulep*, the Supreme Court cited *Lim* as authority and held that the offense of failure to pay deficiency taxes[12] is committed only *after* finality of the assessment *coupled with* the taxpayer's willful refusal to pay the taxes within the allotted period:

> On the other hand, the Solicitor General avers that the information for violation of the Tax Code was filed within the prescriptive period of five (5) years provided in Section 340 (now 281 in 1997 NIRC) of the Code. It is only when the assessment has become final and unappealable that the five (5) year period commences to run. A notice of assessment was issued on July 16, 1984. When petitioner failed to question or protest the deficiency assessment thirty (30) days therefrom, or on August 16, 1984, it became final and unappealable. Consequently, it was from this period that the prescriptive period of five (5) years commenced. Thus, the complaint filed with the Department of Justice on June 8, 1989 was within the prescribed period.
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> 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. 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." (*Underscoring supplied*)

In this case, the *Written Report on Personal Service or Substituted Service* (WRPSSS) attached to the *Joint Complaint-Affidavit of the Revenue Officers* stated that

[12] Section 73 of the 1939 NIRC and Section 255 of the 1997 NIRC.

the Formal Assessment Notice (FAN) was served to the taxpayer on February 7, 2018.[13] The taxpayer had thirty (30) days or until March 9, 2018 to protest the FAN but it allegedly *did not.* Thus, the assessment became final on March 12, 2018.[14] Therefore, it was on March 12, 2018 that the accused committed the offense of willful refusal to pay the tax based on the case law of *Lim* and *Tupaz*.

Counting five (5) years from March 12, 2018, the *Information* should have been filed with the Court by March 12, 2023. However, the plaintiff only filed it on April 8, 2024. By then *prescription* had already set in.

WHEREFORE, premised considered, the case is **DISMISSED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[13] Docket, p. 54.
[14] Monday.