CTA Form No. 8 (For DCC)

23-000134-0012

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DFIRST DIVISION

CTA CRIM CASE NO. O-1031

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MARC ANTHONY B. GERONIMO, in his capacity as Partner/General Manager of DENHART INTERNATIONAL COMPANY,
Accused.

NOTICE OF RESOLUTION

To:

CITY PROSECUTOR FEDINAND U. VALBUENA
ASST. STATE PROS. SHEILA CINDY DC. MASANGQUE
Department of Justice
Office of the City Prosecutor
3rd Floor, Judicial Complex
10th Avenue, Caloocan City

ATTY. ANVARI F. ARGUELLES
ATTY. ROGELIO D. SAGUINSIN III
Bureau of Internal Revenue - Revenue Region No. 5
Legal Division, 9th Floor, BIR Building
No. 140 Bo. Kalaanan, Brgy. 86
EDSA, Caloocan City

GREETINGS:

You are hereby notified by these presents that on **January 9, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 10, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,* - versus - **MARC ANTHONY B. GERONIMO, in his capacity as Partner/General Manager of DENHART INTERNATIONAL COMPANY**, *Accused.*	**CTA CRIM CASE NO. O-1031** For: Violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. *Members:* **DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.* Promulgated: JAN 0 9 2024 2:55 PM

x - x

RESOLUTION

This resolves plaintiff's *Motion for Reconsideration (Re: Resolution dated September 11, 2023)*,[1] filed on October 26, 2023.

Plaintiff seeks reconsideration of this Court's Resolution[2] issued on September 11, 2023 (*Assailed Resolution*), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, CTA Crim. Case No. O-1031 is hereby **DISMISSED** because of the prescription of the offense charged.
>
> The *Warrant of Arrest* and *Alias Warrant of Arrest* dated April 28, 2023 and June 13, 2023, respectively issued against accused MARC ANTHONY B. GERONIMO, are **RECALLED** and **SET ASIDE**.

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[1] Docket, pp. 102-108.
[2] Docket, pp. 94-101.

The Letter filed by Police Lieutenant Colonel David A. Toctocan Jr., Officer in Charge, Detective and Special Operations Unit, National Police Commission, Philippine National Police, Criminal Investigation and Detection Group on August 23, 2023, is **NOTED**.

SO ORDERED.

In asking for a reconsideration, plaintiff avers that it received a copy of the *Assailed Resolution* on October 11, 2023. However, the record[3] reveals that the plaintiff received a copy of the same through the *Prosecution Division* of the Bureau of Internal Revenue and the Office of the City Prosecutor – Department of Justice Caloocan City on September 13, 2023 and September 21, 2023, respectively.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SECTION 1. *Who may and when to file motion.* — **Any aggrieved party may seek a reconsideration** or new trial **of any** decision, **resolution,** or order **of the Court by filing a motion for reconsideration** or new trial **within fifteen days from the date of receipt of notice of the** decision, **resolution** or order of the Court in question." (*Emphasis supplied*)

The rule is and has been that the period for filing a motion for reconsideration is non-extendible.[4] If no motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.[5]

As the record reveals, plaintiff received a copy of the *Assailed Resolution* on September 13, 2023. Hence, counting fifteen (15) days therefrom, plaintiff had until September 28, 2023 to file its motion for reconsideration. But for reasons only known to it, plaintiff only filed its Motion on October 26, 2023, beyond the 15-day reglementary period to appeal. For the sake of argument, assuming that the receipt of the plaintiff through the Office of the City Prosecutor on September 21, 2023 is to be considered, the filing of its motion for reconsideration on October 26, 2023 would still be out of time.

[3] *Notice of Resolution*, Docket, p. 92.
[4] *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.
[5] *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.

Further, even assuming that plaintiff's motion for reconsideration is timely filed, the same would still be denied for lack of merit.

In asking for a reconsideration, plaintiff, citing the case of *Susan V. Llenes v. Hon. Isaias P. Dicdican*,[6] asserts that the filing of the criminal complaint before the Prosecutor's Office suspends the running of the prescriptive period. Hence, for the plaintiff, the instant case is not barred by prescription as the filing of the complaint for preliminary investigation against the accused on July 24, 2014, is well within the five-year prescriptive reckoned from the finality of the assessment on February 6, 2010.

The Court is not convinced.

It bears to emphasize that the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[7] *(Lim)* deals explicitly with the prescription for criminal violation of the Tax Code, while the case cited by the plaintiff deals with the prosecution of an offense not involving criminal violation of the Tax Code. The ruling in *Lim* that the filing of Information in court interrupts the running of the prescriptive period is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), which reads:

> "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.**" (*Boldfacing supplied*)

Thus, in view of *Lim* and the RRCTA, the Court reiterates that the period of prescription for criminal violation of the Tax Code begins to run from the commission of the violation of the law, and if the same is not known at the time, from the discovery

[6] G.R. No. 122274, July 31, 1996.
[7] G.R. Nos. L-48134-37, October 18, 1990.

and institution of proceedings for its investigation and shall only be tolled by the filing of an Information with the court.

In the case at bar, the Assessment Notices/Formal Letters of Demand assessing DENHART INTERNATIONAL COMPANY were issued on December 15, 2009, and DENHART INTERNATIONAL COMPANY received the same on January 6, 2010.

Under Section 228[8] of the NIRC of 1997, as amended, DENHART INTERNATIONAL COMPANY had thirty (30) days from January 6, 2010 or until February 5, 2010, within which to file its protest. Allegedly, DENHART INTERNATIONAL COMPANY failed to file the administrative protest set forth under Section 228 of the NIRC of 1997, as amended. Thus, the assessments issued against DENHART INTERNATIONAL COMPANY became final and executory on February 5, 2010.

Considering the foregoing and following the ruling in *Lim*, the five (5)-year prescriptive period to indict accused for failure to pay tax lapsed on **February 5, 2015**. Thus, the right of the government to institute the case against the accused had already prescribed when the *Information* was filed before this Court on April 13, 2023.

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration (Re: Resolution dated 09 August 2023)* filed on October 26, 2023, is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *xxx* x--x

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice