REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***FIRST DIVISION***

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| **PEOPLE OF THE PHILIPPINES,** *Plaintiff,* | **CTA CRIM. CASE No. O-814** |
| | *For: Violation of Sec. 255 of the NIRC of 1997, as amended* |
| -versus- | **Members:** |
| **LUCKY FORT FOOD VENTURES, INC., ROBERTO V. GARCIA, and VALERIE ANNE G. MALIG,** *Accused.* | **DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.* |
| | **Promulgated:** AUG 10 2022 2:58 p— |

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# RESOLUTION

This resolves accused's **Demurrer to Evidence with Leave of Court**, attached to accused's *Ad Cautelam* Manifestation (with Motion to Submit the Demurrer to Evidence for Resolution) filed on June 28, 2022, with plaintiff's **Comment (To Demurrer to Evidence with Leave of Court)** filed on July 8, 2022, and accused's **Reply [To the Comment to Demurrer to Evidence dated July 7, 2022]** filed on July 25, 2022.

Foremost, it is fitting to state that the Court did not order the accused to file a Reply on the prosecution's Comment to Demurrer to Evidence more so the filing of accused's aforesaid Reply is not sanctioned both by the Rules on Criminal Procedure and the Revised Guidelines for Continuous Trial of Criminal Cases. Hence, the Court is constrained to expunge from the records accused's Reply.

Anent accused's Demurrer to Evidence, accused seek for the dismissal of the case and for their acquittal for failure of the prosecution to prove their guilt beyond reasonable doubt, and for a declaration that they be discharged from any civil liability arising thereof.

Accused claim that the prosecution's evidence is insufficient to prove their guilt beyond reasonable doubt considering the following: (i) the claim against them has prescribed since the Joint Complaint-

Affidavit was filed only on May 17, 2019, or after almost seven (7) years from the date of alleged commission of the violation; (ii) the element of willful refusal to pay income tax to be liable under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, is lacking; and, (iii) the assessment and collection by the Bureau of Internal Revenue (BIR) are void since accused was not afforded with due process. Accused also claim that the prosecution did not adduce evidence to show that the accused were given any opportunity to participate in the preliminary investigation before the Department of Justice. Accused further assert that based on evidence presented by the prosecution, the accused is not civilly liable.

In its Comment (To Demurrer to Evidence with Leave of Court), plaintiff states that:

1. The deficiency tax assessment against accused Lucky Fort Food Ventures, Inc. (Lucky) for taxable year (TY) 2008 has become final, executory and demandable. The prosecution was able to prove that accused Lucky belatedly filed a Protest Letter seeking reinvestigation of the Formal Assessment Notice, thus, accused is barred from raising any question about the validity and correctness of the deficiency income tax assessment for TY 2008; and,

2. The allegation that the element of willful refusal to pay income tax to be liable under Section 255 of the NIRC of 1997, as amended, is lacking deserves scant consideration. The prosecution was able to prove that the BIR issued and served to the accused the Preliminary Collection Letter dated 07 January 2015, Final Notice Before Seizure dated 13 February 2015 and Warrant of Distraint and/or Levy dated 30 June 2015. The willfulness of the accused to pay the deficiency income tax for TY 2008 is clearly evident from their repeated acts of voluntary and intentional failure to pay said tax.

Accused's Demurrer to Evidence is meritorious.

Records disclose that on February 26, 2020, accused Lucky Fort Food Ventures, Inc. and its responsible officers, Roberto V. Garcia and Valerie Anne G. Malig, president and treasurer, respectively, were charged before this Court for violation of Section 255 of the NIRC of 1997, as amended. The accusatory portion thereof reads:

> "That on 28 June 2012 and thereafter, in Taguig City, and within the jurisdiction of this Honorable Court, accused LUCKY FORT FOOD VENTURES, INC., a registered taxpayer of BIR RDO No. 44 under Tax Identification No. 249-569-127-000, with obligation under the law to file and pay the corresponding Income Tax Return for taxable year/period 01 January to 31 December 2008, and accused ROBERTO V. GARCIA and VALERIE ANNE G. MALIG, its president and treasurer, respectively, and corporate

> responsible officers, did then and there, willfully and knowingly fail to pay the correct income tax based on Letter of Authority (LoA) No. LOA-00027482, in the amount of P5,281,279.36, exclusive of surcharges and interest, despite final assessment notice including prior and post notices and formal demand to pay, the last being in the nature of final notice for them to pay the said tax, to the damage and prejudice of the Government.
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> CONTRARY TO LAW."

The subject Information, however, was filed beyond the five (5)-year period provided under Section 281 of the NIRC of 1997, as amended, *viz.*:

> "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**.
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> **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.**
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> **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**.
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> The term of prescription shall not run when the offender is absent from the Philippines." *(Emphases supplied)*

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[1] (*Lim* case), the Supreme Court elucidated the point when prescription for criminal violation of the provisions of the NIRC, **involving taxpayer's refusal to pay the deficiency income taxes due,** commences, *viz.*:

> "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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[1] G.R. No. L-48134-37, October 18, 1990.

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

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, the date of commission of which is known, the five (5)-year prescriptive period commences to run from the date the assessment notices became final and executory and continues to run until the filing of the Information in Court.

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.[2] The <u>second</u> paragraph of Section 281 of the NIRC of 1997, as amended, talks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third</u> paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, filing of criminal information with the court.

Construing aforequoted provision, *Lim*[3] declared that it is the filing of information in court for violation of Section 73 of the NIRC of 1939, as amended,[4] which tolls the running of the prescriptive 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 wilful refusal to pay the taxes due within the alloted period. **The two criminal informations, having been filed on June 23, 1970, are well-within**

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[2] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.
[3] G.R. No. L-48134-37, October 18, 1990.
[4] Section 73. *Penalty for Failure to File Return or to Pay Tax.*

> **the five-year prescriptive period and are not time-barred.**" (*Boldfacing supplied*)

Even the Bureau of Internal Revenue (BIR) has recognized that it is upon the filing of information in court which interrupts prescription. Item 2(d) of Revenue Memorandum Circular No. 101-90 dated November 26, 1990, states:

> "d) x x x
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> The offenses under the Tax Code are seemingly 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**." (*Boldfacing supplied*)

Subsequent to *Lim*, the **Supreme Court, sitting *en banc***, promulgated its decision in *Luz M. Zaldivia vs. Hon. Andres B. Reyes, Jr., and People of the Philippines* (*Zaldivia*),[5] which ruled that it is the filing of the information in court which tolls the prescriptive period (albeit for violation of ordinance), to wit:

> "As it is clearly provided in the Rule on Summary Procedure that among the offenses it covers are violations of municipal or city ordinances, it should follow that the charge against the petitioner, which is for violation of a municipal ordinance of Rodriguez, is governed by that rule and not Section 1 of Rule 110.
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> Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actual filed in court and not on any date before that.
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> This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." **The proceedings referred to in Section 2 thereof are "judicial proceedings," contrary to the submission of the Solicitor General that they include administrative proceedings.** His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does.

[5] G.R. No. 102342, July 3, 1992.

> At any rate, the Court feels that **if there be a conflict between the Rule on Summary Procedure and Section 1 of Rule 110 of the Rules on Criminal Procedure, the former should prevail as the special law**. And if there be a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the latter must again yield because this Court, in the exercise of its rule-making power, is not allowed to "diminish, increase or modify substantive rights" under Article VIII, Section 5 (5) of the Constitution Prescription in criminal cases is a substantive right." (*Boldfacing supplied*)

**The decision in *Zaldivia* may not be deemed as modified, abandoned or overturned, except by the Supreme Court, sitting *en banc*.[6] To date, no such decision has yet been issued.**

Not only that, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, further provides:

> "SEC. 2. *Institution of criminal actions*. – **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be <u>instituted</u> 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)
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> **The <u>institution</u> of the criminal action shall interrupt the running of the period of prescription**." (*Boldfacing and underscoring supplied*)

Thus, the RRCTA, being the special provision that specifically governs the proceedings before the Court, must perforce prevail over any interpretative pronouncement anent the proper application of the rules on prescription of criminal actions especially when such contrary interpretation does not involve construction of Section 2, Rule 9 of the RRCTA.

To note, the Court *En Banc* has consistently ruled that prescription of crimes punishable under the NIRC of 1997, as amended, is suspended only when the information is filed in court.[7]

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[6] Section 4(3), Article VIII, Constitution.
[7] See *People of the Philippines vs. Juanchito D. Bernardo, et al.*, CTA EB Crim No. 078 (CTA Crim. Case No. O-731), September 29, 2021; *People of the Philippines vs. Juanchito D. Bernardo, et al.*, CTA EB Crim. No. 079 (CTA Crim. Case No. O-733), July 7, 2021; *People of the Philippines vs. Virgilio B. Castillo*, CTA EB Crim. No. 053 (CTA Crim. Case No. O-663), June 8, 2021; *People of the Philippines vs. Ulysses Palconet Consebido*, CTA EB Crim. No. 076 (CTA Crim. Case Nos. O-700, O-702 and O-703), January 27, 2021; and *People of the Philippines vs. Ulysses Palconet Consebido*, CTA EB Crim. No. 069 (CTA Crim. Case No. 0-701), January 6, 2021.

In *People of the Philippine Islands vs. Juan Moran, et al.*,[8] the Supreme Court elucidated on the rationale of the statute of limitations for crimes, *viz.*:

> "x x x The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. **Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.** Independently of these views, it must be remembered that **delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony.** It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained. **They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subaltern, and to secure for criminal trials the best evidence that can be obtained.**" (*Boldfacing supplied*)

To be sure, criminal offenses for violations of the NIRC, including those the commission of which are known, are not intended to be imprescriptible. If the prescription is interrupted when proceedings for preliminary investigation are instituted before the DOJ, it would mean that there is no timeline within which the information must be filed in court. Effectively, the crime will never prescribe once a complaint is filed with the DOJ, thereby allowing the potential use of the rule on prescription as a weapon to torment, harass and molest taxpayers suspected of committing a tax offense.

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. In a sense, it acts as a check valve against unscrupulous public officials from abusing powers inherent in their position, including the not so improbable conduct of instituting vexatious, capricious and oppressive investigations.

In the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. The said legal

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[8] G.R. No. L-17905, January 27, 1923.

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principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender.[9] Thus, the interpretation that the filing of the information in court which is more favorable to the accused (and not the filing of the complaint with the prosecutor) must be construed as the point in time that suspends the running of the prescriptive period for crimes punishable under the NIRC of 1997, as amended.

In the present case, a perusal of the records shows that the Assessment Notice was issued on April 12, 2012.[10] Accused Lucky therefore had thirty (30) days from April 12, 2012 or until May 12, 2012 within which to file its protest. As stated in the Joint Complaint-Affidavit,[11] accused failed to file its protest on the Assessment Notice, thus, the assessments against it became final and executory on May 13, 2012.

Counting from May 13, 2012, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on May 13, 2017. 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 February 26, 2020.[12]

Considering that the case against the accused is already barred by prescription, the civil liability arising from the offense charged is consequently extinguished.

In view of prescription of the offense, there is no need to discuss the remaining grounds raised by the accused in their Demurrer to Evidence.

**WHEREFORE**, premises considered, accused's **Reply [To the Comment to Demurrer to Evidence dated July 7, 2022]** filed on July 25, 2022 is **EXPUNGED** from records, while accused's **Demurrer to Evidence with Leave of Court** is **GRANTED.** Accordingly, the present case against accused Lucky Fort Food Ventures, Inc. and its responsible officers, Roberto V. Garcia and Valerie Anne G. Malig, president and treasurer, respectively, is **DISMISSED** due to prescription. Accused Lucky Fort Food Ventures, Inc. and its responsible officers, Roberto V. Garcia and Valerie Anne G. Malig are **ACQUITTED**.

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[9] *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.
[10] Exhibit "P-11"; Docket, p. 615.
[11] Exhibit "P-1"; Docket, p. 587-591, 589.
[12] Docket, p. 5.

Let the cash bond in the amount of Sixty Thousand Pesos (₱60,000.00) each posted by accused Roberto V. Garcia and Valerie Anne G. Malig be **RELEASED**, subject to accounting rules and regulations.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**CATHERINE T. MANAHAN**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice