REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

U-NID-ME MANPOWER, INCORPORATED and its responsible corporate officers ELAINE T. SUNGA (President) and RICARDO L. BENITEZ (Treasurer),
Accused.

CTA Crim Case No. O-1012
For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended

Members:

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

Promulgated:

SEP 26 2023; 9:00AM

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RESOLUTION

On February 16, 2023, the Court received the Returns of Warrant of Arrest, with attached copy of Warrants of Arrest against accused **Elaine T. Sunga** (Sunga)[1] and **Ricardo L. Benitez** (Benitez),[2] filed by Olivia A. Sagaysay, Police Lieutenant Colonel, Acting Chief, Detective and Special Operation Unit (DSOU), Criminal Investigation and Detection Group, Camp BGen. Rafael T. Crame, Quezon City, which stated that accused Sunga and Benitez could not be found at their given address despite diligent efforts exerted.

On February 22, 2023, the Court noted the Returns of Warrants of Arrest and ordered that Alias Warrants of Arrest be issued against the accused. The Court also directed the prosecution and the Commissioner of Internal Revenue to exert efforts in determining the exact whereabouts of the said

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[1] Docket, pp. 85-88.
[2] *Id.*, 81-84.

accused for their early apprehension.[3] On February 27, 2023, Alias Warrants of Arrest[4] were issued by the Court against the accused.

Meanwhile, upon re-examining the records and the factual antecedents obtained in this case, the Court finds that it should be dismissed on the ground of *prescription.*

Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended, governs the prescriptive period for filing of criminal actions for violations of the 1997 NIRC, to wit:

> 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*)

Clear from the foregoing provision that, *first,* the period of prescription for the offense charged is five (5) years; *second,* the prescription period starts to run from the day of the commission of the violation of the law, if known, or if the date of commission is unknown, from the discovery thereof *and* the institution of judicial proceedings for its investigation and punishment; and, *third,* prescription shall be tolled when proceedings are instituted against the guilty persons.

Here, the Information filed against the accused was for willful failure to pay income tax for the year 2013.[5]

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[3] Resolution, *id.*, p. 90.
[4] *Id.*, pp. 91-92.
[5] Docket, pp. 5-7. The accusatory portion of the Information reads:

That on or about 02 October 2017 and thereafter, in Manila City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, **U-NID-ME Manpower, Incorporated**, and, **Elaine T. Sunga** and **Ricardo L. Benitez**, its president and treasurer, respectively, and therefore, responsible corporate officers, with Tax Identification No. 006-797-568, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay the company's **income tax** obligations fort the year 2013, in the amount of Four Million Five Hundred Eighty-Nine Thousand Eight Hundred Sixty-Three Pesos and Twenty-Two Centavos (Php4,589,863.22), exclusive of surcharge and interest, under BIR Assessment Notice Nos. 33-13-IT-17-092 and 33-13-MC-17-092(IT), did then and there willfully, unlawfully, knowingly feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without

In the case of *Lim, Sr., et al. v. Court of Appeals* (*Lim*),[6] 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 was coupled with the 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 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.
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> ... 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, <u>*up to* the filing of the information in court does not exceed five (5) years</u>**. (*Emphasis supplied*)

From the foregoing, 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 begins to run from the date the assessment notices became final and executory and continues to run *until* the filing of the Information in Court.

By the prosecution's account, the Formal Letter of Demand with Assessment Notices (FLD/FAN) were issued, served to, and received by the accused on January 24, 2017.[7] The due date for payment stated in the FLD/FAN was on February 24, 2017.[8] The accused did not protest the FLD/FAN within the thirty (30)-day period; hence, the assessment became final, executory, and demandable[9] on **February 25, 2017**.

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formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.

CONTRARY TO LAW.

[6] G.R. Nos. L-48134-37, October 18, 1990.

[7] Par. 12, Complaint-Affidavit, Docket, p. 46.

[8] Annexes "G" to "G-6" of Complaint-Affidavit, Docket, pp. 44-50.

[9] Par. 13, Complaint-Affidavit, Docket, p. 46.

In *Tupaz v. Ulep* (*Tupaz*),[10] the Supreme Court elucidated that in willful non-payment of deficiency taxes, the five (5)-year prescriptive period should commence to run *after* the finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period:

> **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**. ... (*Emphasis supplied*)

Guided by the principles in *Lim* and *Tupaz*, the prosecution had five (5) years from the finality of the assessment on February 25, 2017, or until February 25, 2022, to file an Information with this Court. Thus, when the Information was filed with this Court on December 6, 2022, the right of the government to institute the case against the accused had already prescribed.

WHEREFORE, premises considered, CTA Crim. Case No. O-1012 is **DISMISSED** on the ground of prescription. Accordingly, the Alias Warrants of Arrests issued against accused Elaine T. Sunga and Ricardo L. Benitez dated February 27, 2023 is **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

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JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice