REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

FAREAL BUILDERS, INC., and its responsible officers, FERDINAND I. SANTOS and LILIBETH M. SANTOS,
Accused.

CTA CRIM CASE NO. O-958
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:

JUN 21 2023 1:40 PM

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RESOLUTION

For resolution is the accused's *Motion to Quash Information* and *Motion to Reduce Bail* filed on March 20, 2023, with plaintiff's *Comment (Re: Motion to Quash Information dated March 20, 2023)* filed on May 22, 2023.

In the *Motion to Quash Information*, the accused moved for the quashal of the Information filed against them on the ground of prescription, citing Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended and the case of *Sze v. Bureau of Internal Revenue.*[1]

According to the accused, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) were issued on October 16, 2012 for the corporation's Value-Added Tax (VAT) obligations for the year 2010. Considering that the violation was discovered on November 15, 2012, the Information issued against the accused on October 2, 2019 and later filed with the Court on December 1, 2022, is beyond the 5-year prescriptive period.

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[1] G.R. No. 210238, January 06, 2020.

In their *Motion to Reduce Bond*, both accused claim that they cannot afford to post bail because they are retired senior citizens with no means to gain income as their business had gone bankrupt, and they rely only on their pension to sustain their daily needs.

Plaintiff, on the other hand, contends that the Information was timely filed based on Section 205 (b) in relation to Section 223 of the NIRC of 1997, as amended. Plaintiff claims that a Warrant of Distraint and/or Levy (WDL) was received by the accused's representative, Paola Bianca B. Garcia, on May 22, 2013. On January 22, 2014, the Bureau of Internal Revenue (BIR)'s Collection Division sent a letter to the City Assessor of Quezon City requesting verification of whether the accused corporation has real properties in its name, which the City Assessor answered in the negative.

For plaintiff, considering that no property could be located and the WDL was duly served upon the accused, the running of the statute of limitations is suspended under Section 223.

Plaintiff, however, interposes no objection to the accused's *Motion to Reduce Bail.*

We resolve.

Plaintiff argues that Section 223[2] of the NIRC of 1997, as amended, suspended the running of the statute of limitations in a proceeding in court for collection of deficiency taxes when the WDL is duly served upon the taxpayer, and no property could be located.

Plaintiff misconstrued Section 223 as applicable in this case when the provision only pertains to instances where the internal revenue taxes may be assessed or collected after the ordinary prescriptive period.

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[2] SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

This is not a regular or ordinary collection case but a criminal case where the prescriptive period for the violation of any provision of the NIRC of 1997, as amended, is governed by Section 281, 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. ... (*Emphasis supplied*)

Here, the Information filed against the accused was for willful failure to pay taxes under Section 255 of the NIRC of 1997, as amended, to wit:

> That on or about 16 November 2012 and continuously up to the present, in Quezon City, and within the jurisdiction of this Honorable Court, said **accused**, Fareal Builders, Incorporated, Ferdinand I. Santos, and Lilibeth M. Santos, being then its President and Treasurer, respectively, and therefore responsible officers, **to whom notices and demands were made by the Bureau of Internal Revenue (BIR), to pay the corporation's value-added tax obligations for the year 2010**, *to wit:* Five Million Fifty-One Thousand Five Hundred Eighty-Six Pesos and Nineteen Centavos (P5,051,586.19), exclusive of surcharges and interest, under BIR Assessment Notice No. 040-BO55-10, did then and there, **willfully, unlawfully and knowingly fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final**, to the damage and prejudice of the government. (*Emphasis supplied*)

In the oft-cited case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3] (*Lim case*), the Supreme Court interpreted Section 354 of the NIRC of 1939

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

(now Section 281 of the NIRC of 1997, as amended), [4] and held that the prescription for criminal violation of the provisions of the NIRC, involving taxpayer's refusal to pay the deficiency income taxes, runs from the taxpayer's receipt of the notice and demand coupled with the willful refusal to pay the taxes due within the allotted period, *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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> > "(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*." (*Emphasis on the original*)
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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**

[4] Below is a side-by-side comparison of Section 354 of the 1939 NIRC and Section 281 of the 1997 NIRC, copied *verbatim*:

Section 354 of the NIRC of 1939	Section 281 of the NIRC of 1997
SEC. 354. *Prescription for Violations of Any Provisions of this Code.* – All violations of any provisions of this Code shall prescribe after five 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.	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

> **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. (*Emphasis supplied*)

The BIR circularized the pronouncement in *Lim case* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[5] which stated:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.*," G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
>   The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. <u>The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.</u>
>
> 2. *Prescription under Section 280 of the Tax Code.*
>   (a) **The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only <u>after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.</u>** [*Emphasis supplied*]

Subsequently, in the case of *Tupaz v. Ulep* (*Tupaz*),[6] the Supreme Court affirmed that in willful non-payment of deficiency taxes, the five-year prescriptive period shall 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

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[5] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*
[6] G.R. No. 127777, October 1, 1999.

> 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.** (*Emphasis supplied*)

Applying *Lim* and *Tupaz*, the cause of action accrued after the BIR served the notice and demand to pay, *i.e.*, FAN and FLD, to the accused on October 25, 2012. Even with the demand to pay, the accused still refused to pay their deficiency taxes within the allotted period, as stated in the FAN and FLD. Nor did the accused file their protest within 30 days from receipt of the assessment. Hence, the assessment attained finality on *November 24, 2012*.

Under RMC No. 101-90, "*the offense is **committed** only after receipt is coupled with refusal to pay the tax within the allotted period.*" Thus, the accused failure to pay deficiency taxes was allegedly "committed" on November 24, 2012, and the prescription began to run on the same date. Counting five years from November 24, 2012, the prescriptive period to institute the criminal action under Section 281 of the 1997 NIRC, lapsed on November 24, 2017.

From the alleged "commission" of the offense involving a violation of the NIRC on *November 24, 2012*, and the filing of the Joint Complaint-Affidavit on *April 12, 2018*, up to the filing of the *Information* on *December 1, 2022*, more than *ten (10) years* have elapsed.

Being over five (5) years late, the right of the government to institute the instant case against the accused had already prescribed when the *Information* was filed with this Court on December 1, 2022.

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WHEREFORE, the accused's *Motion to Quash Information* is **GRANTED** on the ground of prescription.

Considering that plaintiff's right to file this case has prescribed, and the Information filed against the accused is quashed, the accused's *Motion to Reduce Bond* is noted without action for having become moot and academic.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice