REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ANTONIO VALERIANO M. BERNARDO,
(A.V.M. BERNARDO ENGINEERING),
(AT-LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila),
Accused.

CTA Crim. Case No. O-929
(NPS Docket No. XVI-INV-16B-00056)
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, ***PJ, Chairperson,***
MANAHAN, and
REYES-FAJARDO ***JJ.***

Promulgated:
NOV 28 2022 11:10 a.m.

x- -x

RESOLUTION

On September 6, 2022, an Information was filed against accused Antonio Valeriano M. Bernardo indicting him for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended. The accusatory portion of which states:

> That on or about the 25th day of January 2013, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO VALERIANO M. BERNARDO, Filipino citizen, and a registered taxpayer with Tax Identification Number (TIN) 147-851-256, being a registered sole owner of the business enterprise under the name and style "A.V.M. Bernardo Engineering", filed his Quarterly Value-Added Tax (QVAT) return for the 4th Quarter of the taxable year 2012, as required under Sections 105, 106 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, wilfully, unlawfully and feloniously, with willful and deliberate intent, fails to supply correct and accurate information in his 4th QVAT return when he declared only the amount of Five Million Four Hundred Seventy Two Thousand Three Hundred Sixty Six

Pesos and 07/100 Centavos (Php5,472,366.07), as his total vatable sales receipt in the said return, when in truth and in fact, his total vatable sales/receipts per audit of the Bureau or Internal Revenue amounted to Twenty Two Million Seven Hundred Thirty Six Thousand Six Hundred Twenty Four Pesos (Php22,736,624.00) that resulted to his failure to pay the correct tax in the total amount of Two Million Seventy One Thousand Seven Hundred Ten Pesos and 95/100 Centavos (Php2,071,710.95), as the basic deficiency net value-added tax, exclusive of interests and increments, to the damage and prejudice of the government.

CONTRARY TO LAW.

In support thereof, the following documents were attached to said Information:

1. Resolution dated July 28, 2017 issued by Senior Assistant State Prosecutor Ma. Cristina A. Montera-Barot, recommending that accused Antonio Valeriano M. Bernardo be charged for violation of Section 255 of the NIRC of 1997, as amended;

2. Authority and approval for the filing and institution of criminal Complaint against accused Antonio Valeriano M. Bernardo, issued by the Commissioner of Internal Revenue (CIR), and filed with the Department of Justice (DOJ) on February 18, 2016;

3. National Prosecution Service Investigation Form dated February 18, 2016; and

4. Joint Complaint Affidavit (JCA) of Gina D. Floreza and Grace G. Marohomsalic filed with the DOJ on February 18, 2016, with the following attachments:

a. Certificate of Registration dated January 1, 1996;[1]
b. NID Memorandum dated January 6, 2015;[2]
c. Letter of Authority dated March 23, 2015;[3]
d. Checklist of Requirements;[4]
e. Memorandum to RDO Alfredo P. Santos dated June 15, 2015;[5]

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1 Annex "A," JCA.
2 Annex "B," JCA.
3 Annex "C," JCA.
4 Annex "C-1," JCA.
5 Annex "D," JCA.

f. Annual Income Tax Return for the year 2012;[6]
g. Annual Income Tax Return for the year 2013;[7]
h. Quarterly Value-Added Tax Return from January 1, 2012 to March 31, 2012;[8]
i. Quarterly Value-Added Tax Return from April 1, 2012 to June 30, 2012;[9]
j. Quarterly Value-Added Tax Return from July 1, 2012 to September 30, 2012;[10]
k. Quarterly Value-Added Tax Return from October 1, 2012 to December 31, 2012;[11]
l. Quarterly Value-Added Tax Return from January 1, 2013 to March 31, 2013;[12]
m. Quarterly Value-Added Tax Return from April 1, 2013 to June 30, 2013;[13]
n. Quarterly Value-Added Tax Return from July 1, 2013 to September 30, 2013;[14]
o. Quarterly Value-Added Tax Return from October 1, 2013 to December 31, 2013;[15]
p. Letter to Mountain Maid Training and Development Foundation Inc. dated June 8, 2015;[16]
q. Letter dated June 24, 2015;[17]
r. Certification;[18]
s. Letter dated June 15, 2015;[19]
t. Certification dated June 30, 2015;[20]
u. Schedule of Sales per Audit CY 2012-2013;[21]
v. Certificate of Creditable Tax Withheld at Source from August 1, 2012 to August 31, 2012;[22]
w. Certificate of Creditable Tax Withheld at Source from October 1, 2012 to October 31, 2012;[23]
x. Certificate of Creditable Tax Withheld at Source from February 1, 2013 to February 28, 2013;[24] and,
y. Certificate of Creditable Tax Withheld at Source from March 1, 2013 to March 31, 2013;[25]

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6 Annex "E," JCA.
7 Annex "E-1," JCA.
8 Annex "F," JCA.
9 Annex "F-1," JCA.
10 Annex "F-2," JCA.
11 Annex "F-3," JCA.
12 Annex "G," JCA.
13 Annex "G-1," JCA.
14 Annex "G-2," JCA.
15 Annex "G-3," JCA.
16 Annex "H," JCA.
17 Annex "I," JCA.
18 Annex "I-1," JCA.
19 Annex "J," JCA.
20 Annex "K," JCA.
21 Annex "L," JCA.
22 Annex "M," JCA.
23 Annex "M-1," JCA.
24 Annex "M-2," JCA.
25 Annex "M-3," JCA.

OUR RULING

This case merits outright dismissal.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[26]

Jurisprudence[27] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

> **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, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[28]

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26 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

27 *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

28 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended, is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.*, interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[29] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> . . .
>
> 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 the five-year prescriptive period and are not time-barred.**
>
> **. . .**[30]

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:

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29 G.R. Nos. L-48134-37, October 18, 1990.

30 Boldfacing supplied.

> **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. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied.)

From the foregoing, the period of prescription for a tax case begins to run from the discovery and institution of proceedings for its investigation and shall only be tolled by the filing of an information therefor with this Court.

In this case, plaintiff's witnesses Gina D. Floreza and Grace G. Marohomsalic, executed and filed a Joint Complaint-Affidavit against accused on February 18, 2016 for preliminary investigation.

On July 28, 2017, the DOJ issued a Resolution finding probable cause against accused for violation of Section 255 of the NIRC of 1997, as amended. Consequently, the subject Information charging accused for violating Section 255 of the NIRC of 1997, as amended, was issued with even date of July 28, 2017.

However, said Information was filed only on September 6, 2022, or only after more than six (6) years from the filing of the Joint Complaint-Affidavit on February 18, 2016, which was way beyond the prescriptive period of five (5) years under Section 281 of the NIRC of 1997, as amended, and as interpreted in the *Lim* case.

The failure of the prosecution to timely file the Information in Court, within the five-year prescriptive period renders the present case dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest against accused Antonio Valeriano M. Bernardo, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-929, is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice