REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus –

SHELMARK BUILDERS PHILS., INC. and SANTIAGO C. BARANGAN
No. 51 Pisces St., Carmel 5 Subdivision, Tandang Sora, Quezon City, (At-Large),
Accused.

CTA CRIM. CASE NO. O-1054
For: Violation of Section 255 in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

AUG 2 2 2023
1:15 p.m.

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RESOLUTION

To recall, on May 26, 2023, the Court directed the prosecution to submit the original or certified true copy of the *Referral Letter from the Commissioner of Internal Revenue*, *Department of Justice (DOJ) Investigation Data Form*, and the *Joint Complaint-Affidavit.*[1]

Meanwhile, in the *Resolution* dated June 1, 2023, this case was transferred to the CTA Second Division pursuant to the Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023.[2]

On June 21, 2023, the prosecution filed its *Manifestation/Explanation* dated June 20, 2023 manifesting that the copies of the *Manifestation/Compliance* dated June 13, 2023, with attachments, were filed on even date through electronic filing and also through express/registered mail due to the distance, time constraints, and lack of available messengerial staff

[1] *Resolution* dated May 26, 2023, Docket, pp. 90 to 92.
[2] *Resolution* dated June 1, 2023, Docket, p. 93.

to effect personal filing/service thereof. The Court received said *Manifestation/Compliance* on June 27, 2023.

A perusal of the *Manifestation/Compliance* reveals that the prosecution submitted original copies of the *Referral Letter from the Commissioner of Internal Revenue* and the *Joint Complaint-Affidavit*. With regard to the *DOJ Investigation Data Form,* the prosecution explains, with regret, that a copy of the said form was not on file when the case was reassigned to her.

Accordingly, plaintiff's *Manifestation/Compliance* is **NOTED**. The attached original copies of the *Referral Letter from the Commissioner of Internal Revenue* and the *Joint Complaint-Affidavit* are **ADMITTED** as forming part of the records of the case.

That having been settled, this Court shall now proceed with the determination of the existence of probable cause for the issuance of warrant of arrest against accused pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[3]

The *Information* against herein accused Shelmark Builders Phils., Inc and its Treasurer and General Manager, Santiago C. Barangan, reads as follows:

> "That on or about the 15th day of April, 2006, in Quezon City, and within the jurisdiction of this Honorable Court, accused Shelmark Builders Phils., Inc., a domestic corporation, doing business in Quezon City and Santiago C. Barangan, being its Treasurer and General Manager, did then and there, willfully, unlawfully and feloniously fail to make and file its income tax return, at the time required by law, with the Bureau of Internal Revenue for taxable year 2005, much less pay the corresponding taxes thereto, amounting to One Million One Hundred Four Thousand Two Hundred Ninety-One Pesos and Twenty Centavos (₱1,104,291.20), excluding charges and penalties thereon, despite demand, to the damage and prejudice of the Government.
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> **CONTRARY TO LAW.**"

The prosecution presented the following pertinent supporting documents for the examination of the Court:

1. *Resolution,* dated January 20, 2018, signed by Assistant State Prosecutor Arlie Alilam-Ramos, recommended by Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved

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3 SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

by Senior Deputy State Prosecutor OIC-Prosecutor General Richard Anthony D. Fadullon;

2. *Resolution,* dated September 12, 2022, resolving the motion for reconsideration, signed by Assistant State Prosecutor Arlie Alilam-Ramos, recommended by Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Senior Deputy State Prosecutor OIC-Prosecutor General Richard Anthony D. Fadullon;

3. *Joint Complaint-Affidavit* of Imogene B. Usison, Gina D. Floreza, and Albino G. Guyala, Jr., with attached annexes; and

4. *Referral Letter from the Commissioner of Internal Revenue,* dated August 17, 2006.

After careful consideration of the allegations in the *Information* and personally examining and evaluating the supporting documents submitted, the Court finds no probable cause to issue a warrant of arrest as the government's right to institute the criminal action has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: *(1)* the period of prescription for the offense charged; *(2)* the time the period of prescription starts to run; and *(3)* the time the prescriptive period was interrupted.[4]

Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "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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4 *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

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

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years. Prescription begins to run *(1)* from the day of the commission of the violation of the law; and *(2)* if the day of the commission is unknown, from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment. In both instances, the period is interrupted when *judicial* proceedings are instituted against the guilty persons.[5]

It now becomes imperative to first determine whether the day of the commission of the violation is known or unknown based on the allegations in the Information and its supporting documents to ascertain the commencement of the five-year prescriptive period.

In this case, the violation as alleged in the Information is that the accused "willfully, unlawfully and feloniously fail to make and file its income tax return". In addition, based on the Commissioner of Internal Revenue's (CIR's) *Referral Letter* dated August 18, 2006, their preliminary investigation revealed that the accused failed to register with the Bureau of Internal Revenue (BIR) and has not been filing tax returns. Such being an omission on the part of the accused, the day of commission of the violation is unknown until the same is discovered. Thus, the commencement of the prescriptive period is from the discovery of the commission *and* the institution of judicial proceedings for its investigation and punishment.

In relation thereto, in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[6] (*Lim* case), the Supreme Court discussed Section 281 of the NIRC of 1997, as amended, and the commencement of the prescriptive period where the commission of the violation is not known, among others, to wit:

> "With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of discovery of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.
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> On behalf of the Government, the Solicitor General counters that the crime of **filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have**

[5] *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090, June 21, 2023.
[6] G.R. Nos. L-48134-37, October 18, 1990.

> **been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment** and therefore required the petitioners to pay ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.
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> Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. **It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
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> xxx
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> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 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, up to the filing of the information in court does not exceed five (5) years.**" *(Emphasis supplied.)*

Based on Section 281 of the NIRC of 1997, as amended, as further explained by the Supreme Court in the above case, where the commission of the violation of the law is not known, the prescriptive period begins to run from:

(1) Discovery; **and**
(2) Institution of judicial proceedings (i.e., offense is indorsed to the Prosecutor's Office for preliminary investigation).

In the present case, the accused's violation was only discovered after the BIR conducted its investigation pursuant to *Letter of Authority (LOA) No. 2201-00025949* dated April 20, 2006.[7] Thereafter, on August 17, 2006, the CIR indorsed the case to the DOJ for preliminary investigation, which was received by the DOJ on August 18, 2006.[8]

[7] Docket, p. 49.
[8] *Referral Letter of the Commissioner of Internal Revenue* dated August 17, 2006, Docket.

Counting from the discovery of the violation of the NIRC of 1997 and the institution of the judicial proceeding for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on **August 18, 2006**, the Information should have been filed before this Court within five (5) years from August 18, 2006, or until August 18, 2011. Clearly, when the instant Information was filed before this Court on April 20, 2023, eleven (11) years and eight (8) months have passed since the government's right to institute a criminal action prescribed.

WHEREFORE, premises considered, the Court finds no probable cause to issue a warrant of arrest in view of the prescription of the criminal offense charged.

Accordingly, CTA Criminal Case No. O-1054 is **DISMISSED** on the ground of prescription.

SO ORDERED.

(On leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice