REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

TIAN CHIONG SY CO, (Printworld Enterprises)
No. 169 Jose P. Bautista Ave. cor. Guava Road, Potrero, Malabon City,
(At Large),
Accused.

CTA CRIM. CASE NO. O-1001
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

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

Promulgated:
AUG 14 2023
9:N a.m.

x - x

RESOLUTION

Before this Court are the following:

1. **Information** dated June 1, 2020 filed on December 6, 2022;

2. Prosecution's **Manifestation and Compliance** dated June 2, 2023 filed *via* courier and received by this Court on June 7, 2023; and

3. Prosecution's **Manifestation and Compliance** dated June 2, 2023 filed through registered mail on June 6, 2023 and received by this Court on June 13, 2023.

To recall, in the Resolutions dated January 19, 2023 and March 2, 2023, the Court directed, among others, the prosecution to set forth the fixed principal amount of taxes claimed in this case. As previously stated by the Court, "the Information allegedly states the amount of taxes involved is 'Three Million Eight Hundred Seventy Five Thousand Two Hundred Eighty Two Pesos and Seventy Centavos (₱3,875,282.70), more or less, exclusive of surcharge and interest'. As such, the same is not fixed due to the term 'more or less', thus, the Court cannot ascertain if it has jurisdiction over this case."[1] In the meantime, the determination of probable cause for the issuance of a warrant of arrest was held in abeyance.

On May 11, 2023, the Court directed the prosecution to file, within five (5) days from notice, an Amended Information setting forth the fixed principal amount of taxes claimed in this case. Further, the Public Prosecutor was ordered to show cause why no sanction should be imposed for the non-compliance with the Court's Resolution dated March 2, 2023. The determination of probable cause for the issuance of a warrant of arrest was further held in abeyance.

On June 7, 2023, the Court received prosecution's Manifestation and Compliance filed *via* courier. Attached therewith are the following:

1. Certified True Copy (CTC) of Annex "A" – Office Order No. 0026 - Deputization of Special Prosecutors of the Bureau of Internal Revenue (BIR), Legal Division, Revenue Region No.5, Caloocan City ("Office Order No. 0026", for brevity) dated January 11, 2023;

2. Amended Information; and

3. Photocopy of Department of Justice (DOJ) Resolution dated March 5, 2020.

On June 13, 2023, the Court received a photocopy of prosecution's Manifestation and Compliance, which was filed through registered mail on June 6, 2023, as well as photocopies of attached Annex "A"– Office Order No. 0026 - Deputization of Special Prosecutors of the BIR and Amended Information.

In the Manifestation and Compliance, the State Prosecutor stated that:

> "xxx xxx xxx
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> 3. The undersigned wishes to inform this Honorable Court that immediately upon the receipt of the Resolution dated March 2, 2023 requiring to state the fixed principal amount of tax liabilities, she immediately communicated with Atty. Napoleon P. Campos, Jr., Bureau of Internal Revenue (BIR) Special Prosecutor, and requested the latter to comply with the directive as to the amount. Undersigned respectfully submits that compliance by the BIR, as requested, would amount to a compliance on the part of the National Prosecution Service (NPS), since they are duly deputized as special prosecutors in this case.

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[1] Docket, p. 79 and p. 148.

> 4. Moreover, at that point, there was no talk as to amendment of the Information considering that our main concern was to comply with the directive of this Honorable Court which is to clarify the exact amount due to the supposed confusion brought about by the use of the words "more or less" after the specified amount.
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> 5. Undersigned humbly posits that she was under the impression that there was no need to amend the Information as the allegations therein are sufficient to prosecute the case and confer jurisdiction to this Honorable Court. The use of the words "more or less" in the information is not indicative of uncertainty as to the amount, but is used as a matter of prudence.
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> 6. Undersigned hereby respectfully offers her profuse apologies for whatever inconvenience or delay that may have been caused by such confusion. It is far from the intention of the undersigned to disregard any lawful order of this Honorable Court.
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> xxx xxx xxx"

Based on Office Order No. 0026, Atty. Napoleon P. Campos, Jr. of the Bureau of Internal Revenue (BIR) is a deputized Special Prosecutor to assist the Department of Justice (DOJ) in the prosecution of tax cases in judicial courts including the Court of Tax Appeals (CTA). It follows that his compliance is also the prosecutor's compliance.

The State Prosecutor also submitted an amended Information, in compliance with the Resolutions dated January 19, 2023 and March 2, 2023.

In the Amended Information, the prosecutor of the DOJ accuses Tian Chiong Sy Co, being the proprietor of Printworld Enterprises, of the offense of "Willful Failure to Pay Tax" under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on March 20, 2014, in Caloocan City, Philippines, and within the jurisdiction of this Honorable Court, accused Tian Chiong Sy Co, being then the proprietor of Printworld Enterprises, with business address at 169 Jose P. Bautista Ave. cor. Guava Road, Potrero, Malabon City, did then and there, willfully, knowingly and consciously fail and refuse and still fails and refuses to pay his deficiency Income Tax (IT) for taxable year 2008 in the amount of Three Million Eight Hundred Seventy Five Thousand Two Hundred Eighty Two Pesos and Seventy Centavos (P3,875,282.70), exclusive of surcharge and interest, for taxable year 2008, despite prior and post notices and final demands to pay, the latest being in the nature of final notice before filing criminal complaint dated March 20, 2014, to the damage and prejudice of the government.
>
> Contrary to Law."

After a perusal of the Amended Information, the Court notes that the words "more or less" were already deleted. The amount of deficiency Income Tax (IT) for taxable year 2008 is fixed in the amount of Three Million Eight Hundred Seventy Five Thousand Two Hundred Eighty Two Pesos and Seventy Centavos (₱3,875,282.70), exclusive of surcharge and interest.

Section 7 (b)(1) of Republic Act (RA) No. 1125,[2] as amended by RA No. 9282,[3]

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
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> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
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> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate**. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized." *(Emphases supplied.)*

Applying the foregoing provision, and considering the allegation on the deficiency tax, the Court finds that this case meets the jurisdictional amount of One Million Pesos (₱1,000,000.00). Thus, the CTA has jurisdiction.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[4]

Considering the compliance by the State Prosecutor, including the submission of the Amended Information, We now proceed to the

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[2] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.
[4] *Foronda-Crystal vs. Son*, G.R. No. 221815, November 29, 2017.

determination of probable cause for the issuance of a warrant of arrest pursuant to Section 4, Rule 9 of the 2005 Revised Rules of the CTA (RRCTA),[5] as amended.

After a careful consideration of the allegations in the Information/Amended Information and personally examining and evaluating the supporting documents submitted by the prosecution, the Court finds that the right to institute the criminal action against the accused has already prescribed.

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.**
>
> **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." *(Emphases supplied.)*

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC 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.[6]

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[5] 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 Chairperson 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.

[6] *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer),* CTA EB Crim. No. 090, June 21, 2023.

As to the tolling of the prescriptive period, pertinent is Section 2, Rule 9 of the 2005 RRCTA,[7] which provides that the institution of the criminal action shall interrupt the running of the period of prescription; and that 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 *Lim, Sr. vs. Court of Appeals,*[8] *(Lim* case*)* the Supreme Court discussed, among others, the commencement of the five (5)-year prescriptive period in criminal cases involving willful refusal to pay deficiency taxes, pursuant to Section 354 (now 281) of the NIRC, as amended, as follows:

> "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 supplied)
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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**

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[7] RULE 9
Procedure in Criminal Cases

xxx xxx xxx

SECTION 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.

The institution of the criminal action shall interrupt the running of the period of prescription. *(Emphases Supplied.)*

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

receipt was coupled with the willful 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." *(Emphases supplied.)*

As culled from the DOJ Resolution dated March 5, 2020,[9] the following pertinent transactions transpired:

"On October 6, 2011, a Preliminary Assessment (PAN) was issued and served to respondent through the registered mail. His representative received the PAN on November 16, 2011. Nonetheless, he again failed to refute the findings of the BIR

Consequently, the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) dated November 10, 2011 were issued by the BIR through Revenue Region No. 5, Caloocan City. This was served to respondent through the registered mail and his representative received them on December 23, 2011.

Respondent formally filed a request for reinvestigation through a letter protest, which was received by the BIR on November 24, 2011. On November 28, 2011, the BIR granted his request for reinvestigation and he was required to submit all the pertinent documents in support of his protest. But he still failed to submit the required documents for investigation.

On May 4, 2012, Revenue Officer Jocelyn A. Bacorro (Bacorro) made a Memorandum attesting to the fact that no document relative to the case of respondent has been submitted for verification. For this reason, the assessments issued against him became final and executory.

In a letter dated May 15, 2012, OIC-Revenue District Officer Bonifacio L. Caringal of the Revenue District No. 26, Malabon-Navotas Cities, denied respondent's request to reinvestigate his 2008 assessed deficiency taxes.

The BIR then sent a Preliminary Collection Letter (PCL) dated August 29, 2012 and a Final Notice Before Seizure (FNBS) dated September 17, 2012 to him. A Warrant of Distrant and/or Levy was also served on November 26, 2012 against respondent.

The case was then transmitted to the Arrears Management Team (AMT) for the continuance of collection enforcement for the delinquent accounts of respondent. On July 4, 2013, Warrants of Garnishment were issued and served to several banks against his deposits but the same yielded no positive result.

A Final Notice Before Filing Criminal Complaint dated March 20, 2014 was served to respondent by registered mail which he received on March 27, 2014. After the exhaustion of the administrative remedies, the BIR filed the instant complaint."

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9 Respondent refers to the accused in this case.

A perusal of the Records shows that the final notice and demand for payment of the instant deficiency tax was made through the issuance of the Final Notice Before Seizure (FNBS) dated September 17, 2012, signed by the Revenue District Officer, and addressed to the accused, and received by Fredie A. Latosa on September 26, 2012. Pertinent portion of the FNBS states:

> "xxx we would like to inform you that we are again giving you **the last opportunity to make the necessary settlement** of the above-stated liability **within ten (10) days from receipt of this notice.** Should we fail to hear from you within this period, this office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment to enforce the collection of your account. xxx"

Considering that the accused was given ten (10) days from receipt of FNBS on September 26, 2012, counting ten (10) days therefrom, the accused had until October 6, 2012, the last opportunity, to make the necessary settlement or payment. Verily, the records show that the accused failed to pay the deficiency tax subject matter of this case. Applying the *Lim* case, which explicity provides that, "[t]he offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period", the commencement of the five (5)-year prescriptive period is on October 6, 2012.

On November 20, 2014, then Commissioner of Internal Revenue Kim S. Jacinto-Henares referred the case to the Department of Justice (DOJ), for filing of criminal charges against the accused.[10] Attached therewith was the Complaint-Affidavit, dated November 20, 2014, signed by Revenue Officers Alile S. Jipus, Jocelyn A. Bacorro, Noel M. Brio, and Napoleon P. Campos, Jr.

On May 5, 2020, the DOJ through its Prosecution Attorney issued the DOJ Resolution resolving the complaint filed by the BIR.[11]

On December 6, 2022, the Information was filed in this Court.

Counting five (5) years from October 6, 2012, the five-year prescriptive period lapsed on October 6, 2017. Considering that the Information was filed in Court only on December 6, 2022, this Court finds that the right of the government to institute the the criminal action against the accused has already prescribed.

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[10] Docket, p. 95.
[11] *Id.*, pp. 11-20.

WHEREFORE, in view thereof, the **Manifestation and Compliance** dated June 2, 2023 filed by the prosecution on June 6 and 7, 2023, respectively, are **NOTED**.

The case is **DISMISSED** for being filed out of time.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice