REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-1057
For: Violation of Section 254, 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.*

- versus -

MERRYSUN CORPORATION,
(Unit 2508 & 2509 World Trade Exchange 215 Juan Luna St., Binondo, Manila)

ARLENE YU BENITEZ,
(Unit 2508 & 2509 World Trade Exchange 215 Juan Luna St., Binondo, Manila)

SAM RAMOS VILLA,
(Bantug Norte, Cabanatuan City)

SHARLY CAI TAN,
(215 Juan Luna St., Binondo, Manila)

-All At-Large-
Accused.

Promulgated:
JUL 26 2023
3:30 p.m.

x---x

RESOLUTION

Records show that on April 20, 2023, the prosecution filed an Information against herein accused for violating Section 254, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or before April 2, 2018, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, as responsible officers of Merrysun Corporation, a registered taxpayer, did then and there willfully, knowingly and unlawfully affix counterfeit Bureau of Internal Revenue stamps on sixty-five (65) boxes of cigarettes (with 500 packs per box) with intent to evade or defeat a tax or the payment thereof, resulting to a basic excise tax liability of One Million Fifty-Seven Thousand Eight Hundred Seventy Five Pesos (P1,057,875.00), more or less, excluding the interest and penalties thereon, which payment is required under the pertinent provisions of the National Internal Revenue Code of 1997, thereby depriving the government of the needed revenues to sustain public service.
>
> CONTRARY TO LAW."

Pursuant to Section 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, the Court shall determine the existence or non-existence of probable cause. In this respect, "the judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice."[1]

Corollary thereto, the prosecution presented the following supporting documents for examination of the Court:

1. DOJ Resolution;

2. Investigation Data Form;

3. Referral Letter of BIR Commissioner Caesar R. Dulay; and

4. Joint Complaint-Affidavit of Erddie S. Esber, Ma. Victoria B. Alferez and Nelson V. Gonzales with annexes.

After a careful consideration of the allegations in the Information and the personal evaluation of the Resolution of the Department of Justice and its supporting documents, the Court finds that the dismissal of the present case is in order for reasons to be discussed below.

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[1] *Alfredo C. Mendoza v. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014, 722 SCRA 647 citing *People v. Castillo and Mejia*, 607 Phil. 754; 590 SCRA 95 (2009).

Section 7(b)(1) of Republic Act (RA) No. 1125, as amended, delineates the exclusive original jurisdiction of this Court vis-à-vis the regular courts with regard to the criminal violations of the National Internal Revenue Code of 1997, as amended (1997 NIRC), as follows:

> (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 filing of such civil action separately from the criminal action will be recognized. *(Emphasis supplied)*

As may be gleaned from the above-quoted provision, this Court shall exercise exclusive original jurisdiction over criminal offenses arising from violation of the 1997 NIRC where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more. Otherwise, the jurisdiction over these criminal cases shall belong to the regular courts.

The Information filed readily shows that the basic excise tax liability being claimed is *"x x x One Million Fifty-Seven Thousand Eight Hundred Seventy Five Pesos (P1,057,875.00),* ***more or less,*** *excluding the interest and penalties thereon x x x."*[2] Considering that the Information did not definitely state the principal amount of taxes being claimed, the jurisdiction of this Court over the offense charged cannot be established.

In addition to the foregoing, this Court also finds that the present case has already prescribed. Section 281 of the 1997 NIRC provides:

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[2] Emphasis supplied.

> 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.**
>
> **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)*

In resolving the issue of prescription of the offense charged, the Court shall consider the following: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; (3) the time the prescriptive period was interrupted.[3]

Sec. 281 of the 1997 NIRC plainly provides that the period of prescription for all criminal tax violations shall be five (5) years. As regards the commencement of the running of such prescriptive period, the same will depend on whether the offense was known at the time it was committed. If known at the time of commission, prescription starts from the said date. Otherwise, prescription begins to run at the time of the discovery of the offense **and** the institution of judicial proceedings for its investigation and punishment.

The present case involves an alleged fraudulent affixing of counterfeit Bureau of Internal Revenue (BIR) stamps on 65 boxes of cigarettes with intent to evade or defeat a tax or the payment thereof. In *Lim, Sr. v. Court of Appeals*,[4] the Supreme Court provided the following guidance in the application of prescriptive period for criminal tax offenses relevant to the resolution of the present case, 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

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[3] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006 citing *Domingo v. Sandiganbayan*, 379 Phil. 708, 717 (2000).

[4] G.R. No. 48134-37, October 18, 1990, 190 SCRA 616 ("*Lim, Sr.*").

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.

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 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 P1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. **The Solicitor General stresses that Section 354[5] 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.

But according to the Lim spouses, that argument had precisely been raised, considered, and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:

> 'Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*' (Italics supplied).

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 <u>tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial</u>

[5] Now Sec. 281 of the 1997 NIRC.

proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.

In the case of *People vs. Tierra*, the same argument came up before the Court but its conclusions on the issue of prescription did not bring us any closer to a categorical ruling. It opined:

> 'Evidence was adduced to show, and the trial court so found, that the falsity of the returns filed by the appellant and his failure to preserve his books of accounts for at least five years from the date of the last entry in each book were all discovered only on December 16, 1950. Since the informations were filed on December 12, 1955, the trial court correctly ruled that the actions were all within the five-year period of limitation.
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> 'Appellant argues, however, that since the informations make no allegation that the offenses were not known at the time of the commission as to bring them within the exception to the statute of limitations, then the informations were necessarily defective for that reason, and this fatal defect cannot be cured by the introduction of evidence. Prescription is a matter of defense and the information does not need to anticipate and meet it. The defendant could, at most, object to the introduction of evidence to defeat his claim of prescription; but he did not. *Anyway, the law says that prescription begins to run from . . . 'the institution of judicial proceedings for its . . . punishment.'* (Italics supplied).

Unless amended by the Legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[6]

As regards the tolling of the running of the prescriptive period, the Supreme Cour in *Lim, Sr.* also provided that the same shall be interrupted upon the filing of the information in court. Notably, this ruling is in congruence with Sec. 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) which states:

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[6] Emphasis and underscoring supplied; Citations omitted.

> 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.
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> **The institution of the criminal action shall interrupt the running of the period of prescription.** *(Emphasis supplied)*

As borne out by the records, the Referral Letter of former BIR Commissioner Caesar R. Dulay as well as the Complaint-Affidavit executed by Erddie S. Esber, Ma. Victoria B. Alferez and Nelson V. Gonzales charging the accused of the offense charged, among others, were filed before the Department of Justice (DOJ) on April 13, 2018. Counting five (5) years from said date, the prosecution had until April 13, 2023 within which to institute the necessary criminal action. Accordingly, the filing of the Information on April 20, 2023 is already time-barred.

WHEREFORE, Criminal Case No. O-1057 is **DISMISSED** for lack of jurisdiction and/or on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice