REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-1059** For: Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended.
- versus –	Members:
NATURE'S BEST AGRI FOODS CORPORATION AND ANGELINA M. MALONZO, (Lot 9 Block 5, Pineapple Road Constantino Subd., Phase III Poblacion 2, Marilao, Bulacan),[1] Accused.	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* Promulgated:

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RESOLUTION

For resolution of this Court are:

1. the **Motion to Quash** filed by the accused on May 5, 2025, with plaintiff's **Comment (Re: Motion to Quash)**, filed on June 4, 2025; and,

2. the **2nd Amended Information** filed by plaintiff on June 4, 2025.

Accused moves for the quashal of the *Information* filed against her on the grounds that: (1) the facts charged do not constitute an offense; and, (2) the criminal action or liability has been extinguished.

[1] However, per Certification (Residency) issued by the Office of the Barangay Captain of Barangay Tambubong on March 31, 2025, Ms. Angelina M. Alonzo a.k.a. Angelina M. Mariano resides at 5 F. Roxas St. Tambubong, Bocaue, Bulacan.

For the *first* ground, accused claims that both the original *Information* and *Amended Information* failed to indicate the taxable year (TY) she allegedly failed to pay the value added tax (VAT).

Citing Sections 6 and 11, Rule 110 of the Revised Rules on Criminal Procedure (RRCP), accused contends that, although it is a cardinal rule in criminal procedure that the precise time at which an offense committed need not be alleged in the complaint or information, it is still required that the act be alleged to have been committed at any time as near as the actual date of the commission of the offense. Allegedly, the purpose of this rule is to apprise the accused of the approximate date when the offense charged was committed so as to enable him to prepare his defense and avoid any surprise.

As such, accused points out that the period to which she allegedly failed to pay the VAT amounting to ₱8,967,110.44 was not indicated in either the original *Information* or the *Amended Information*; thus, it would be arduous for her to prepare a defense in the absence of the period of the alleged commission of the offense. Ostensibly, it is settled that, if despite amendment, the complaint or information still suffers from the same defect, the complaint or information shall be quashed.

Anent the *second* ground, accused stresses that, even if such period was not stated in the *Information* but could be deduced from the pieces of evidence, the present case still does not hold water for being filed beyond the five-year prescriptive period.

To prove the same, accused narrates the factual antecedents stated in the Complaint-Affidavit executed by Reuben C. Estillore, Kristy Marie L. Grefalda and Rose Dianne C. Baustista, to wit: that a Letter of Authority (LOA) was issued on March 12, 2014; that Preliminary Assessment Notice (PAN) No. 7260 dated July 27, 2016 was then served at the business address of accused Nature's Best Agri Foods Corporation (NBAFC), however, subject taxpayer did not file any reply thereto; that Final Assessment Notice (FAN) Nos. 35663 and 21411 with Formal Letter of Demand (FLD) dated October 3, 2016 were then sent to accused NBAFC; that a Preliminary Collection Letter (PCL) dated January 24, 2017 was thereafter served through registered mail to NBAFC; and, that this was followed by a Final Notice Before Seizure (FNBS). Accused continues that the *Information* dated March 9, 2020 was filed before the CTA – Third Division on April 20, 2023.

Finding basis in the ruling of the Supreme Court in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines,* as well as Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides for a five-year prescriptive period for violation thereof, accused asserts that more than five years have lapsed – reckoned from the issuance of the FLD on October 3, 2016, PCL on January 24, 2017 and FNBS on February 6, 2017 – before the *Information* was filed against her on April 20, 2023.

On the other hand, plaintiff counters that the instant *Motion to Quash* should not be given any scant consideration based on the arguments discussed below.

Quoting Section 281 of the NIRC of 1997, as amended, on the period of prescription for filing of a criminal action, plaintiff avers that the complaint for violation of Section 255 in relation to Sections 110, 113, 250 and 253 (d) of the same Code was filed with the Department of Justice (DOJ) on November 3, 2016.

Plaintiff also cites the case of *Tupaz vs. Ulep* arguing that the assessment became final and unappealable when the accused failed to file a written protest within 30 days from receipt of the FAN and FLD both dated October 3, 2016. Plaintiff adds that, despite receipt of said notices on October 18, 2016, the accused neither paid her delinquent tax liabilities nor filed a protest seeking reconsideration or reinvestigation of the subject assessments thereby rendering the same final and unappealable on November 17, 2016 pursuant to Section 228 of the NIRC of 1997, as amended.

According to plaintiff, accused cannot belatedly assail the validity of a delinquent tax assessment issued against her which had already lapsed into finality due to her non-filing of a protest or request for reinvestigation.

Plaintiff further claims that, due to the alleged utter disregard by the accused of the Letter Notice, the same was converted into the LOA dated March 12, 2014, pursuant to Section 13 of the NIRC of 1997, as amended, which authorized Revenue Officer (RO) Reuben Estillore under Group Supervisor Victor Allan Tago to conduct audit investigation of the accused's books of accounts and other accounting records for TY 2011; that despite several requests, accused failed and refused to present its records to the Bureau of Internal Revenue (BIR) without any justifiable grounds; and, that the PAN dated July 27, 2016 and FAN/FLD dated October 3, 2016 were subsequently served on August 2, 2016 and October 18, 2016, respectively.

Hence, plaintiff concludes that the case against the accused has not yet prescribed and that the questioned assessment for TY 2011 amounting to ₱42,544,922.59 is now considered final, executory and demandable due to her utter failure to file any valid protest or request for reinvestigation pursuant to relevant laws and jurisprudence.

Lastly, plaintiff clarifies that the failure to indicate the "taxable year 2011" was merely through inadvertence; hence, the filing of an *Amended Information* attached to its comment.

Section 1, Rule 117 of the RRCP provides:

> **SECTION 1**. *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information.

In the Minute Resolution dated June 11, 2025, the Arraignment of the accused and the Pre-Trial were cancelled until further orders from this Court; thus, the *Motion to Quash* was seasonably filed.

Pertinent to the resolution of the first argument is Section 4, Rule 117 of the RRCP, which states:

> **SEC. 4**. *Amendment of the complaint or information.* – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> **If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment**. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. *(Emphasis supplied)*

In this case, records show that the *2nd Amended Information* filed by plaintiff appears to comply with the requisites of Section 6, Rule 110 of the RRCP, thus:

> **SEC. 6**. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense**; and the place where the offense was committed. *(Emphasis supplied)*

To be sure, an examination of the allegation in the aforementioned *2nd Amended Information* shows that the same already indicates the taxable period involved—TY 2011, the pertinent portion of which is quoted below:

> That on or about October 3, 2016, and thereafter, in Marilao, Bulacan, Philippines, and within the jurisdiction of this Honorable Court, accused **NATURE'S BEST AGRI FOODS CORPORATION** a

domestic corporation engaged in the manufacture, processing and selling of agricultural products and its President, **ANGELINA M. ALONZO**, registered with the Bureau of Internal Revenue with Tax Identification No. 007-173-535, required by law to pay Value Added Tax, did then and there, willfully, unlawfully and knowingly fail to pay Value Added Tax for taxable year 2011, in the amount of Eight Million Nine Hundred Sixty Seven Thousand One Hundred Ten Pesos and 44/100 (Php8,967,110.44), exclusive of surcharges, interest and penalties, despite final assessment notice, including prior and post notices and demands to pay and final notice before seizure (FNBS) issued by the Bureau of Internal Revenue, to the damage and prejudice of the Government of the Republic of the Philippines.

In this regard, Section 14, Rule 110 of the RRCP, is instructive:

> **SEC. 14**. *Amendment or substitution.* – A complaint or **information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea**. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused. *(Emphasis supplied)*

Based on the foregoing, an Information may be amended, in form and in substance, without leave of court, at any time before the accused enters his or her plea. Considering that accused has not yet been arraigned, plaintiff's amendment of the *Information* through the filing of *2nd Amended Information* is allowed under the rules.

As to the *second* argument, 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 is interrupted.[2]

Relative thereto, the prescriptive period for violations of the NIRC of 1997, as amended, is governed by Section 281 thereof, which 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**.

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[2] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

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)*

The afore-quoted provision clearly states that the period of prescription for the offense charged is five years. Further, prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

This Court takes into consideration the case of *Tupaz vs. Ulep,*[3] which similarly involves the offense of failure to pay tax despite demand, where the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. 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 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.*)

The allegation in the *Information* and its supporting documents bares that the FAN and FLD were received by the accused on **October 18, 2016**[4] and became final and executory, and demandable after the accused failed to file her protest[5] within 30 days therefrom; hence, the assessment attained finality on **November 18, 2016**. It was, thus, from this date that the five-year prescriptive period commenced, which ended on **November 18, 2021**. Records further show that after the issuance of the PCL on January 24,

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[3] G.R. No. 127777, October 1, 1999.

[4] Par. 7.6, Complaint-Affidavit, Docket, pp. 72 to 73; Formal Letter of Demand and Assessment Notices dated October 3, 2016, Docket, pp. 90 to 95 and 113 to 115; General Information Sheet for the year 2010, Docket, pp. 76 to 81.

[5] Par. 7.7, Complaint-Affidavit, Docket, p. 73.

2017,[6] complainant BIR then issued FNBS on February 6, 2017,[7] a clear indication that accused still refused to pay its tax liabilities despite repeated demands.

Clearly, when the *Information* dated March 9, 2020 was filed before this Court on **April 20, 2023**, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, had already lapsed.

The Court is not unaware of the recent pronouncement of the Supreme Court in *People of the Philippines vs. Ulysses Palconit Consebido* (Consebido),[8] wherein the High Court, after re-examining *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[9] (Lim), categorically ruled that, prescription for criminal offenses under the NIRC of 1997, as amended, is tolled by the filing of a complaint before the DOJ and not by the filing of an Information before the Court (as pronounced in *Lim*). Nevertheless, inasmuch as this is a reversal of *Lim*, constituting a new doctrine declared by the Supreme Court pertaining to prescription of tax offenses, the same should be prospectively applied.

Notably, judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[10] When a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[11]

ACCORDINGLY, the **Motion to Quash** filed by the accused is **GRANTED**. In view thereof, CTA Criminal Case No. O-1059 is **DISMISSED** on the ground of prescription.

Further, the filing of the **2nd Amended Information** by the plaintiff is **NOTED WITHOUT ACTION**.

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6 Par. 7.8, Complaint-Affidavit, Docket, p. 73; Preliminary Collection Letter dated January 24, 2017, Docket, p. 118.

7 Final Notice Before Seizure dated February 6, 2017, Docket, p. 111.

8 G.R. No. 258563, April 2, 2025.

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

10 *Conchita Carpio-Morales, in her capacity as the Ombudsman, vs. Court of Appeals (Sixth Division) and Jejomar Erwin S. Binay, Jr.*, G.R. Nos. 217126-27, November 10, 2015.

11 *People of the Philippines vs. Jose Jabinal y Carmen*, G.R. No. L-30061, February 27, 1974, as reiterated in *Carpio-Morales vs. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015, and *People of the Philippines vs. Martinado y Aguillon*, G.R. No. 92020, October 19, 1992, among others.

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice