REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

STAR ASSET MANAGEMENT NPL INC., MARK S. FRONDOSO, and JOSEPH RYAN R. SYCIP,

Unit 3A, One Orion Building, 11th Avenue corner 38th Street, Bonifacio Global City, Taguig, Metro Manila,

(All-at-Large)

Accused.

CTA Crim. Case No. O-994
(NPS Docket No. XVI-INV-21F-00222)
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended

Members:

MANAHAN, *Chairperson, and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 26 2023
3:10 p.m.

x---x

RESOLUTION

For action are:

1. accused's Motion to Dismiss/ Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest[1], filed on December 13, 2022, without comment from the prosecution;[2]

2. prosecution's Compliance (On the Resolution of the Honorable Court of Tax Appeals dated 06 June 2023), filed on June 26, 2023;[3]

---

1 Docket, pp. 135-166.
2 Per Records Verification dated April 5, 2023, *Id.*, unpaged.
3 *Id.*, unpaged.

285

3. accused's Manifestation with Urgent Motion, filed on June 29, 2023;[4] and,

4. accused's Supplemental Motion to Dismiss/Motion to Quash Information with Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023], filed on July 10, 2023,[5] with Comment/ Opposition (To the Supplemental Motion to Dismiss/Motion to Quash Information with Motion for Partial Reconsideration dated 10 July 2023) from the prosecution filed via registered mail on August 7, 2023.

Prosecution's Compliance (On the Resolution of the Honorable Court of Tax Appeals dated 06 June 2023)

In the Resolution dated June 6, 2023, the Court found the prosecution's Information defective [6] because the facts charged therein do not constitute an offense. Thus, the prosecution was directed to file an Amended Information, curing said defect, within ten (10) days, from receipt of said resolution, lest accused's Motion to Dismiss/Motion to Quash Information would be granted, pursuant to Section 4, Rule 117 of the Rules of Court, as amended.

---

4 *Id.*, unpaged.

5 *Id.*, unpaged.

6 That on or about 18 February 2021, in Taguig City, and within the jurisdiction of this Honorable Court, accused MARK S. FRONDOSO and JOSEPH RYAN R. SYCIP, being the President and Treasurer, respectively, of Star Asset Management NPL Inc., which is engaged in the business of investing in and acquiring non-performing assets of financial institutions, with Tax Identification No. 006-587-868-000, and who is required by law, rules and regulations to file an accurate income tax return and to pay the correct income tax, did then and there knowingly, willfully and unlawfully fail to pay the deficiency income tax in the amount of TWENTY-NINE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND ONE HUNDRED SIXTY-ONE and 24/100 (P29,989,161.24) PESOS, exclusive of surcharge and interest for taxable [year] 2013, despite receipt of the Preliminary Assessment Notice, with Details [of] Discrepancies on 20 December 2016, and Formal Assessment Notice, with Details of Discrepancies, and Assessment Notice, on 13 January 2017, including prior and post-notices and demands to pay, the last of which being the Demand Before Suit dated 14 February 2021, and without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.

CONTRARY TO LAW.

286

On June 26, 2023, the prosecution filed its Compliance (On the Resolution of the Honorable Court of Tax Appeals dated 06 June 2023), submitting the Amended Information[7] dated June 22, 2023, the accusatory portion of which states:

> That on or about 18 February 2021, in Taguig City, and within the jurisdiction of this Honorable Court, accused MARK S. FRONDOSO and JOSEPH RYAN R. SYCIP, being the President and Treasurer, respectively, of Star Asset Management NPL Inc., which is engaged in the business of investing in and acquiring non-performing assets of financial institutions, with Tax Identification No. 006-587-868-000, and who is required by law, rules and regulations to file an accurate income tax return and to pay the correct income tax, did then and there knowingly, willfully and unlawfully fail to pay the deficiency income tax for taxable year 2013 in the amount of TWENTY-NINE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND ONE HUNDRED SIXTY-ONE and 24/100 (P29,989,161.24) PESOS, exclusive of surcharge and interest, despite receipt of the Preliminary Assessment Notice, with Details [of] Discrepancies on 20 December 2016, and Formal Assessment Notice, with Details of Discrepancies, and Assessment Notice, on 13 January 2017, including prior and post-notices and demands to pay, the last of which being the Demand Before Suit dated 14 February 2021, and without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.
>
> **CONTRARY TO LAW.**

The prosecution's Amended Information is still defective and insufficient. The flaw in the original Information was pointed out in the Resolution dated June 6, 2023:

> Here, the prosecution's Information contained the following material averments: (1) SAMI, a corporation engaged in the business of investing in and acquiring non-performing assets of financial institutions, is required by law to file an accurate income tax return and to pay the correct income tax; and (2) accused Frondoso and Sycip, being SAMI's President and Treasurer, respectively, willfully failed to pay the IT due on the latter for TY 2013. **No averment is mentioned that SAMI failed to pay such tax for TY 2013.** Hence, we find that the Information does *not* constitute the offense charged.[8]

---

[7] Docket, unpaged.
[8] Boldafacing supplied.

287

Yet, no averment to that effect was made by the prosecution. On this score alone, dismissal of CTA Crim. Case No. O-994, is warranted, pursuant to Section 4, Rule 117 of the Rules of Court, as amended. Indeed, the constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence.[9]

Accused's Supplemental Motion to Dismiss/Motion to Quash Information

Accused add that another ground warranting the dismissal of CTA Crim. Case No. O-994, is that the criminal action is extinguished. Particularly, the original Information in CTA Crim. Case No. O-994, was instituted beyond the five (5)-year prescriptive period for criminal tax offenses, under Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended.

Through its Comment/Opposition, the prosecution counters that the case is not barred by prescription. It explains that the filing of the complaint before the Department of Justice (DOJ) tolls the running of the prescriptive period for offenses punishable by special laws pursuant to the Supreme Court ruling in *People v. Lee, Jr.*[10]

The Court agrees with accused's additional stance.

Section 3(g), Rule 117 of the Rules of Court, as amended, recognizes extinction of criminal liability as a ground for the grant of a motion to quash.[11] Among the instances where criminal liability is totally extinguished is that the crime or offense is barred by prescription.[12] In particular, Section 281 of the NIRC, as amended,

---

9 *Villarba, v. Court of Appeals, et al.*, G.R. No. 227777, June 15, 2020.
10 G.R. No. 234618, September 16, 2019.
11 **Section 3.** *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:
...
(g) That the criminal action or liability has been extinguished
...
12 See Article 89(5) of the Revised Penal Code.

lays down the prescriptive period for offenses punishable under said Code:

> **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.
>
> ....[13]

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.[14]

The *first* consideration—the period of prescription for tax offenses punishable under the NIRC, as amended, is five (5) years.

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. Pertinently, *Tupaz v. Ulep (Tupaz)*[15] declared that willful failure to pay tax is committed:

> ... after service of notice and demand for payment of the deficiency taxes upon the taxpayer.... 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....

---

13 Boldfacing supplied.

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

15 G.R. No. 127777, October 1, 1999.

The *third* consideration—prescription is interrupted when proceedings are instituted against the guilty persons. *Lim, Sr., et al. v. Court of Appeals (Lim, Sr.)* [16] clarified that the circumstance which would interrupt the running of the prescriptive period for tax offenses under the NIRC, as amended, is the filing of requisite Information in Court:

> . . .
>
> 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 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.**
>
> . . .[17]

Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), too, confirmed the dictum in *Lim, Sr.* To be precise, the institution of the criminal action shall interrupt the running of the prescriptive period. Such institution refers to the filing of Information in Court:

> **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)[18]

---

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

17 Boldfacing supplied.

18 Boldfacing supplied.

290

Prescinding from the above observations, the tax offense in CTA Crim. Case No. O-994 is barred by prescription. Specifically, the Bureau of Internal Revenue's Joint Complaint Affidavit divulged that the Formal Assessment Notice and Details of Discrepancies dated January 11, 2017 covering TY 2013 were served to and received by Star Asset Management NPL Inc. (SAMI) on January 13, 2017.[19] There being no administrative protest filed by SAMI within thirty (30) days from receipt thereof, said final assessment attained immutability on February 12, 2017. SAMI, through accused, failed to pay the tax due therein. Following *Tupaz,* the tax offense was *committed* on February 12, 2017.

Counting five (5) years from February 12, 2017, the prosecution has until February 12, 2022 to file the requisite Information with the Court, pursuant to *Lim Sr.* and Section 2, Rule 9 of the RRCTA. *A fortiori,* the original Information in CTA Crim. Case No. O-994, belatedly filed on December 6, 2022, is barred by prescription under Section 281 of the NIRC, as amended. As a result, the government relinquished its right to prosecute accused in this case. On this point, the pronouncement articulated in *People v. Pacificador*[20] decreed:

> **The statute [of limitations] is** not a statute of process, to be scantily and grudgingly applied, but **an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his [or her] country, and resume his [or her] immunities as a citizen; and that from henceforth he [or she] may cease to preserve the proofs of his [or her] innocence, for the proofs of his [or her] guilt are blotted out.** Hence, it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of **the statute [of limitations] is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.**[21]

The Court is mindful of the principle invoked by the prosecution in *Lee, Jr.*, whereby the filing of the complaint before the DOJ suspends the running of the prescriptive period. Yet, this may

---

[19] Docket, pp. 17-29.
[20] G.R. No. 139405, March 13, 2001, citing *People v. Moran*, 44 Phil. 389 (1923).
[21] Boldfacing supplied.

not be applied in this case because it refers to the *suspension of the prescriptive period for offenses covered by Republic Act No. 3326.*[22] In contrast, the doctrine in *Lim, Sr.* applicable in this case specifically address the suspension of prescriptive period covering *offenses punishable under the NIRC* under Section 354 (now 281) of the NIRC, as amended.

Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023]

Accused assert that the officer who filed the information had no authority to do so based on an invalid Complaint-Affidavit that was made pursuant to a void assessment. They explain that the Letter of Authority No. eLA201200035448 dated December 4, 2015 is null and void for having been served upon SAMI beyond the required thirty (30)-day period from the date of its issuance under Section 2.3 of Revenue Audit Memorandum Order No.1-00.

Through its Comment/Opposition, the prosecution counters that the arguments raised by the accused in their Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023] are not grounds for quashing an information and are matters of defense which must be proven during the trial.

Accused are mistaken.

To reiterate, the BIR personnel who filed the complaint before the Department of justice (DOJ), along with the prosecution who filed an Information with the Court, possess the requisite authority to do so under Section 220 of the NIRC, as amended:

> **Sec. 220.** *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the**

22 *An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin*

> **enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.**[23]

The records reveal that Ellen Gay C. Teoxon, Rhodora C. Balazo, and Mohammad Ali Rodi executed the Joint Complaint Affidavit on June 25, 2021.[24] So was the Certification in the DOJ Investigation Data Form subscribed by said persons.[25] The authority to file criminal charges against SAMI, Manuel T. Frondoso, Mark S. Frondoso, Mr. Joseph Ryan R. Sycip, and Franchette M. Acosta was with prior approval from then Commissioner of Internal Caesar R. Dulay, through his Letter-Referral dated June 25, 2021.[26] For this reason, accused Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023] must be denied.

WHEREFORE, the Court **RESOLVES** to:

1. **GRANT** accused's Motion to Dismiss/ Motion to Quash Information -with- Motion to Hold Issuance or Quash Warrants of Arrest and Supplemental Motion to Dismiss/Motion to Quash Information;

2. **DENY** accused's Motion for Partial Reconsideration [Re: Resolution dated 6 June 2023];

3. **QUASH** the original and amended Information in CTA Crim. Case No. O-994;

4. **DISMISS** CTA Crim. Case No. O-994 solely because: (1) the facts charged therein do not constitute an offense; and (2) prescription of criminal action; and,

5. **MOOT** accused's Manifestation with Urgent Motion.

SO ORDERED.

---

23 Boldfacing supplied.
24 Docket, pp. 184-187.
25 *Id.* at p. 181.
26 *Id.* at pp. 15-16. The date is found on the upper right portion of page 1 thereof.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice