CTA Form No. 8 (For DCC)

24-000130-0003

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1135

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

JOCELYN TOBIG,
JENNIFER JAN GO YU,
ABR HAUS REALTY INC.,
Accused.

To:

DEPUTY CITY PROSECUTOR GENE Z. JULIANDA-SARMIENTO
ASST. CITY PROSECUTOR GLENN R. ROMANO
Department of Justice
Office of the City Prosecutor
2nd Floor, Manila City Hall
Manila

ATTY. MYRNA B. SANTELICES
Bureau of Internal Revenue - Revenue Region No. 6
5th Floor, Legal Division, BIR Building I
Solana Street, Intramuros
Manila

GREETINGS:

You are hereby notified by these presents that on **June 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 28, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JOCELYN TOBIG, JENNIFER JAN GO YU, ABR HAUS REALTY INC.,
Accused.

CTA CRIM. CASE NO. **O-1135**

For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
JUN 27 2024 1:20PM

x - x

RESOLUTION

On 19 March 2024, plaintiff, through the Department of Justice (**DOJ**), filed before this Court an Information[1] against accused **JOCELYN TOBIG, JENNIFER JAN GO YU** and **ABR HAUS REALTY INC.** (collectively, "**accused**"/**Tobig**, **Yu** and **AHRI**), for violation of Section 255[2], in relation to Sections 253(d)[3] and 256[4], of the National

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1 Division Docket, pp. 5-6.

2 **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — **Any person required under this Code** or by rules and regulations promulgated thereunder to pay **any tax**, make a return, keep any record, or supply correct and accurate information, **who willfully fails to pay such tax**, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (Emphasis supplied)

3 **SEC. 253.** *General Provisions.* —

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

4 **SEC. 256.** *Penal Liability of Corporations.* — ...

Internal Revenue Code (**NIRC**) of 1997, as amended. The accusatory portion of which reads:

> . . .
>
> That on or about **December 14, 2023** in the City of Manila, Philippines, the said accused **ABR REALTY HAUS INC., JOCELYN TOBIG** being then the President, and **JENNIFER JAN GO YU** being then Treasurer of **ABR Haus Realty Inc.** located at **725 Tomas Mapua St., Brgy. 305 Zone 29 Dist. III**, this City, did then and there willfully and unlawfully fail and refuse to pay the deficiency Income Tax, valued at **Php5,035,741.29** Philippine Currency, as Internal Revenue Tax Obligations of **ABR Haus Realty Inc,** for the year **2018** in Violation of Section 255 in relation to Secs. 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended.
>
> Contrary to law.[5]
>
> . . .

Attached to the said Information are the following documents:

1. Original of the Resolution dated 12 February 2024, signed by Assistant City Prosecutor Glenn R. Romano, and approved by Deputy City Prosecutor Maria Gene Z. Julianda-Sarmiento;

2. Original of the Subpoena dated 05 January 2024 issued to accused Tobig and Yu;

3. Original of the National Prosecution Service Investigation Data Form dated 14 December 2023;

4. Original of the Referral Letter dated 14 December 2023 of the Bureau of Internal Revenue (**BIR**) Regional Director Renato N. Molina, addressed to the City Prosecutor of Manila;

5. Original of the Joint Complaint-Affidavit (**JCA**) dated 14 December 2023 of Revenue Officer Cressida Regalado (**RO Regalado**) and Officer-in-Charge (**OIC**)-Chief of the BIR's Collection Section Marjurie K. Ostulano (**OIC-Chief Ostulano**), with attached Annexes "A" to "W", inclusive of sub-markings;

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[5] Emphasis in the original text.

6. Certified true copy of accused AHRI's General Information Sheet (**GIS**), attached as Annex "A" to the JCA;

7. Certified true copy of the Certification dated 14 November 2023 issued by the Chief of the Revenue District Office (**RDO**) No. 31's Client Support Section, attached as Annex "B" to the JCA;

8. Print-out of the Monthly Value-Added Tax (**VAT**) Declaration filed through the BIR's e-Filing and Payment System (**eFPS**), attached as Annex "C" to the JCA;

9. Certified true copy of the Certification dated 15 November 2023 issued by the OIC-Chief of the BIR's Collection Section and print-outs of the eFPS Payment Details, attached as Annexes "D" and "E" to the JCA, respectively;

10. Certified true copies of the Collection Notice dated 16 February 2023 and the "Transmittal of Collection Notice of eFPS [Collection and Bank Reconciliation (**CBR**)] Without Payment" dated 17 February 2023, which includes Registry Receipt No. RE740675067ZZ, attached as Annexes "F" and "G" to the JCA, respectively;

11. Certified true copies of the Demand Letter dated 03 March 2023 and the "Transmittal of Demand Letter for Collection Notice of eFPS CBR Without Payment" dated 08 March 2023, which includes Registry Receipt No. RE740676840ZZ, attached as Annexes "H" and "I" to the JCA, respectively;

12. Certified true copies of the Collection Notices, all dated 25 July 2023, issued to and served upon the responsible officers of accused AHRI, some with corresponding Proof of Service, attached as Annexes "J", "J-1", "K", "K-1", "L", "L-1", "M", "N", "N-1", "O" and "O-1" to the JCA, respectively;

13. Certified true copies of the Demand Letter, all dated 27 July 2023, issued to and served upon the responsible officers of accused AHRI, each with its

corresponding Proof of Service, attached as Annexes "P", "P-1", "Q", "Q-1", "R", "R-1", "S", "S-1", "T" and "T-1" to the JCA, respectively;

14. Certified true copy of the Indorsement issued by Revenue District Officer Rebe D. Detablan (**RDO Detablan**), attached as Annex "U" to the JCA;

15. Certified true copy of the Demand Letter dated 05 December 2023 served to accused AHRI, Tobig and Yu, attached as Annex "V" to the JCA; and,

16. Certified true copy of the Memorandum prepared by RO Regalado and OIC-Chief Ostulano.

A perusal of the aforementioned documents attached to the Information shows that the tax being collected is the **unpaid VAT** for the taxable month of **February 2018**, amounting to **₱5,035,741.29**. However, the Information incorrectly states that the accused failed to pay **"deficiency Income Tax ... for the year 2018".** This is erroneous because the tax due in this case is VAT, not income tax. Additionally, the BIR did not initiate a deficiency tax assessment against the accused. Instead, the collection effort stemmed from the BIR's eFPS CBR revealing a VAT declaration without payment.

It must be remembered that the Information is an essential document in criminal proceedings. It pertains to the constitutional right of the accused to be informed of the nature and cause of the accusation against him or her.[6] The sufficiency of the Information apprises the accused of the charges against him or her, and in turn, this should allow the accused to properly prepare his or her defense, and ultimately, ensure the protection of the accused's substantive rights.

Under Section 2[7], Rule 110[8] of the Revised Rules of Criminal Procedure (**RRCP**), an Information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. Furthermore, Section 6[9] of the same rule provides that an

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[6] 1987 Constitution, Article III, Section 14(2).

[7] **Sec. 2**. *The Complaint or information.* — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

[8] Prosecution of Offenses.

[9] **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**

Information is considered sufficient if it states, among others, **the acts or omissions complained of as constituting the offense**.

Jurisdiction over the subject matter is conferred by law and determined by the allegations in the Complaint or Information. If the facts set out therein are sufficient to show that the court in which the Complaint or Information is filed has jurisdiction, then the court may validly take cognizance of the case.[10]

Here, since the Information erroneously stated the type of tax due and the nature of the proceedings initiated against the accused, it evidently failed to accurately state the omission complained of as constituting the offense of willful failure to pay tax under Section 255 of the NIRC of 1997, as amended. As a result, the accused was not properly informed of the exact nature and cause of the accusation, undermining their ability to mount a proper defense. This Court thus finds the instant Information fatally defective as to deprive it of jurisdiction to proceed with the case.

Additionally, even assuming for the sake of argument that the above-mentioned errors in the Information could be disregarded, the offense charged had already prescribed by the time it was filed with this Court.

It bears emphasis that the subject Monthly VAT Declaration (BIR Form No. 2550-M)[11] for the taxable month of February 2018, which indicates an "Output Tax Due for the Month" of ₱5,035,714.29[12], was filed through eFPS on 01 March 2018. Such amount of VAT due allegedly remained unpaid, as certified to by OIC-Chief Ostulano.[13]

The legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances: *first*, at the time required by the law to pay a particular tax; or *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer

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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)

10 *People of the Philippines v. Joel C. Mendez*, G.R. Nos. 208310-11 and G.R. No. 208662, 28 March 2023.

11 Annex "C" to the Joint Complaint-Affidavit (**JCA**) dated 14 December 2023.

12 This amount is ₱27.00 lower than the amount stated in the Information, which is ₱5,035,7**41**.29 (possibly a transposition error, where the digit "14" was entered as "41").

13 See Certification dated 15 November 2023, Annex "D" to the JCA dated 14 December 2023.

to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.[14]

With respect to the first instance, a taxpayer is required to pay tax when the law subjects it to such. The taxpayer thus will undergo self-assessment by initially computing the tax due, files the pertinent tax return and voluntarily pays the said tax. The second instance, on the other hand, involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process.[15]

Since the demand for payment in this case did not originate from an assessment notice, the accused are being prosecuted for their alleged willful failure to pay tax under the first instance. Accordingly, the due date for payment of the unpaid VAT would be the basis for reckoning the five (5)-year prescriptive period under Section 281[16] of the NIRC of 1997, as amended.

Section 114(A) of the NIRC of 1997, as amended by Republic Act (**RA**) No. 10963 or the Tax Reform for Acceleration and Inclusion (**TRAIN Law**), provides the time for filing of the quarterly VAT return, as follows:

> ...
> **SEC. 114**. *Return and Payment of Value-Added Tax.* —
>
> (A) *In General.* — **Every person liable to pay the value-added tax** imposed under this Title **shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis: *Provided, finally*, That beginning January 1, 2023, the filing and payment required under this Subsection shall be done within twenty-five (25) days following the close of each taxable quarter.[17]
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> ...

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14 *People of the Philippines v. Cross Country Oil & Petroleum, Corp., et al.*, CTA Crim. Case No. O-620, 19 May 2021.

15 Id.

16 SEC. **281**. *Prescription for Violations of any Provision of this Code.* — ...

17 Italics in the original text and emphasis supplied.

Relatedly, Section 4.114-1 of Revenue Regulations (**RR**) No. 13-2018[18] similarly provides the filing of return and payment of VAT, to wit:

> . . .
>
> **SEC. 4.114-1. <u>Filing of Return and Payment of VAT.</u>** —
>
> (A) ***Filing or Return.*** — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. The term *"taxable quarter"* shall mean that quarter that is synchronized with the income tax quarter of the taxpayer (*i.e.*, the calendar quarter or fiscal quarter): *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis: ***<u>Provided, finally</u>*** **<u>That beginning January 1, 2023, the filing and payment required under the [NIRC of 1997, as amended] shall be done within twenty-five (25) days following the close of each taxable quarter.</u>**[19]
>
> . . .

The Supreme Court has held in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[20] (**Atlas**) that **VAT is computed and paid on a purely quarterly basis** and that until the VAT-registered taxpayer prepares and submits its quarterly VAT return, there is no way of knowing with certainty just how much output VAT it is due to pay for the quarter, *viz*:

> . . .
>
> It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, **VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just** how much input VAT the taxpayer may apply against its output VAT; **how much output VAT it is due to pay for the quarter** or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the

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18 *Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.*

19 Emphasis, italics and underscoring in the original text.

20 G.R. Nos. 141104 & 148763, 08 June 2007; Citations omitted and emphasis supplied.

> option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. **Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter**, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.
>
> . . .

Based on the foregoing provisions of law, rules and regulations, and jurisprudence, the due date for the payment of VAT for the first quarter of the taxable year (**TY**) 2018, which would include the VAT declaration for February 2018, is **25 April 2018**.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
>
> **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.[21]
>
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that 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. It shall be interrupted when proceedings are instituted

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[21] Italics in the original text and emphasis supplied.

against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[22] The second paragraph of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the third paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Tax Appeals, et al.*[23] **(Lim)**, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases 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, *viz*:

> ...
>
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] 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.**
>
> ...
>
> 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

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22 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

23 G.R. Nos. L-48134-37, 18 October 1990; Citation omitted, italics in the original text, and emphasis supplied.

> would have settled the question once and for all. **As Section 354 [now, Section 281] 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.**
>
> ...
>
> **Unless amended by the legislature, Section 354 [now, Section 281] 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.
>
> ...

Plaintiff thus had five (5) years from 25 April 2018 (*i.e.*, the due date for payment of VAT for the first quarter of TY 2018), or until **25 April 2023**, within which to file the Information in court. Since the subject Information was filed only on **19 March 2024**, *five years, ten (10) months and twenty-three (23) days have elapsed* since the commission of the violation on **25 April 2018** and the criminal action had already *prescribed for ten (10) months and twenty-three (23) days* reckoned from **25 April 2023** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

> ...
>
> 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.

> **The institution of the criminal action shall interrupt the running of the period of prescription.**[24]
>
> . . .

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[25]

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.[26]

Again, given that the Information[27] was filed on **19 March 2024**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **25 April 2023**, plaintiff's right to initiate this case against the accused had already expired by the time of filing. Consequently, this additionally justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[28] Evidently, in this case, prescription has automatically set in when

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24 Italics in the original text and emphasis supplied.
25 See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
26 Id.
27 Supra at note 1.
28 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

plaintiff failed to file the Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[29] Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, in light of the foregoing, this Court has no recourse but to **DISMISS** the instant case *ex mero motu*, not only for lack of jurisdiction due to the fatally defective Information but also due to prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[29] *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.