REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-1112** For: Violation of Section 255, in relation to Section 253 (d) and 256, of the NIRC of 1997, as amended.
- versus -	Members:
	RINGPIS-LIBAN, *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
YES WE CAN INCORPORATED, MERLE F. CAMBAY, MA. SANDRA C. CACALDA, Accused.	Promulgated: JAN 1 [illegible]

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RESOLUTION

Before this Court are the following:

1. the **Urgent Motion to Consolidate**, filed by accused on June 10, 2024, without plaintiff's comment despite notice as per Records Verification dated August 15, 2024; and,

2. the **Motion to Quash**, filed by accused on June 11, 2024, without plaintiff's comment per Records Verification dated August 15, 2024 and September 5, 2024,[1] and the **Reply (Re: Prosecution's Comment dated 26 July 2024)** filed by the accused on August 15, 2024.

In the *Urgent Motion to Consolidate*, accused contend that they have been charged with violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, in two *Information* docketed as CTA Criminal Case Nos. O-1111

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[1] Although accused filed a *Reply (Re: Prosecution's Comment dated 26 July 2024)* relating to the plaintiff's comment to the Motion to Quash, no comment was attached to the docket of this case.

and O-1112 for their alleged refusal to pay the deficiency income and value-added taxes (VAT), respectively, covering taxable year (TY) 2014.

According to the accused, the charges in the aforesaid *Information* are founded on the same facts and that the practicality and orderly administration of justice will be subserved if these two cases be consolidated and jointly tried. Thus, the accused pray that the Court allow the consolidation and joint trial of the CTA Criminal Case Nos. O-1111 and O-1112.

In the meantime, accused filed the *Motion to Quash* on the ground that the criminal action or liability has been extinguished.

Accused contend that they were charged with violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, in two Information both dated April 3, 2023, which were both judicially instituted and filed with this Court on October 4, 2023. Accused stand that the prescription of the said violation began to run from the day the violation was committed or, if not known at that time, from the discovery thereof in accordance with Section 281 of the NIRC of 1997, as amended.

In support of their argument, accused invoke the pronouncement in *Imelda Sze, et. al. vs. Bureau of Internal Revenue*[2] that the prescription starts to run counting 30 days from the service of the Formal Assessment Notice (FAN) and demand to pay the tax deficiency.

Moreover, accused argue that the evidence of the Bureau of Internal Revenue (BIR) itself indubitably shows that the FANs and demand for the payment of accused corporation's deficiency income and VAT for the TY 2014 were sent to and received by accused Merle Cambay on January 18, 2018. According to the accused, those FANs are part of the records of these cases since they were attached as Annexes "C" to "C-3" to the Joint Complaint Affidavit filed with the Department of Justice (DOJ) when they initiated the preliminary investigation.

As accused corporation did not file a protest to the assessments, the same became final and executory after the lapse of 30 days from receipt thereof or on February 17, 2018, and it was on that date when the violations of the NIRC of 1997, as amended, were considered discovered. Accused argue that the BIR thus had five years from that date, or up to February 17, 2023, within which to institute judicial proceedings or criminal actions against them.

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[2] G.R. No. 210238, January 6, 2020.

It is emphasized by the accused that the Information in these two criminal cases were both filed in this Court on October 4, 2023, exceeding the five-year prescriptive period by 299 days under Section 281 of the NIRC of 1997, as amended. Hence, the Information must be quashed on the ground that the criminal liabilities of the accused have been extinguished by prescription.

Further in their *Reply*, accused assert that the FAN became final and executory on February 17, 2018 and that plaintiff agreed that the fie-year prescriptive period would lapse on February 17, 2023. Accused point out that the Information was filed only on April 3, 2023 or 45 days after the lapse of the 5-year prescriptive period under Section 281 of the NIRC of 1997, as amended. As such, accused insist that prescription already set in.

We resolve.

For the orderly disposition of the pending motions, the Court shall first resolve accused's *Motion to Quash.*

In this regard, Sections 1 and 3, Rule 117 of the Revised Rules of Criminal Procedure, provide:

> **SECTION 1.** *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information."
>
> **SEC. 3.** *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:
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> xxx xxx xxx
>
> (g) That the criminal action or liability has been extinguished; [xxx]

Rule 117 of the Rules of Court provides that the accused may, at any time before he enters his plea, move to quash the complaint and information on the ground that the criminal action or liability has been extinguished. Indeed, even if there is yet to be a trial on the merits of a criminal case, the accused can very well invoke the defense of prescription.[3]

Records show that the accused have not yet been arraigned and entered their plea; hence, the *Motion to Quash* was seasonably filed.

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[3] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006.

Upon a careful evaluation of the records, as will be discussed below, this Court finds that the government's right to institute the criminal action has already prescribed.

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 was interrupted.[4]

In relation thereto, Section 281 of the 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. (*Emphasis supplied.*)

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five 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.[5]

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[6] (*Lim* case), which provides that, for purposes of the commencement of the

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[4] *Ibid.* citing the case of *Domingo vs. Sandiganbayan,* G.R. No. 109376, January 20, 2000.

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

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

prescriptive period in relation to the charge of refusal to pay deficiency taxes due, said violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.

In addition, in *Tupaz vs. Ulep*[7] (*Tupaz* case), the Supreme Court, citing the *Lim* case, held that the offense of **failure to pay deficiency taxes** is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period. We quote:

> 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*)

In the present case, both the FANs with the Details of Discrepancies issued on January 10, 2018 were received by the accused Merle Cambay on January 18, 2018.[8] The assessments attained finality on **February 20, 2018,**[9] 30 days after petitioner's period to file the protest lapsed. It is at this point that the offense was committed since the lack of any action after the accused's presumed receipt of the FAN/FLD indicates that the accused refused to pay the tax liability despite demand.

Counting from the finality of the assessment on **February 20, 2018,** the Information should have been filed with this Court within five years from February 20, 2018, or until **February 20, 2023**.

Clearly, when the Information dated April 3, 2023 was filed before this Court only on October 4, 2023, the government's right to institute a criminal action had already prescribed.

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

[8] Annexes "C" to "C-3", Docket (Criminal Case No. O-1112).

[9] February 17, 2018 fell on a Saturday, thus petitioner has until the February 19, 2018 within which to file a protest.

Finding merit on accused's *Motion to Quash,* the Court deems it unnecessary to discuss the *Urgent Motion to Consolidate.*

WHEREFORE, premises considered, the **Motion to Quash** filed by accused on June 11, 2024 is **GRANTED.** Accordingly, the Information filed against accused YES WE CAN INCORPORATED, MERLE F. CAMBAY, and MA. SANDRA C. CACALDA for violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended, for willful failure to pay deficiency income tax for taxable year 2014 docketed as CTA Criminal Case No. O-1112 is **DISMISSED** on the ground that the offense charged has already prescribed.

Consequently, the **Urgent Motion to Consolidate** is rendered **MOOT**.

SO ORDERED.

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice