REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-1009

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MICAH MOTOR, INC., MAURICE DIZON, JR. and **JOY D. FERNANDEZ,**
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR HJALMAR M. QUINTANA, JR.
Department of Justice
Padre Faura Street, Ermita, Manila 1000

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita
Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp Genera Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Manila Police District
United Nations Avenue, Ermita
Manila

GREETINGS:

You are hereby notified by these presents that on **May 15, 2024,** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 17, 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,	CTA Crim. Case No. **O-1009**
	For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
- versus -	Members:
	DEL ROSARIO, *P.J., Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
MICAH MOTOR, INC., MAURICE DIZON, JR. and **JOY D. FERNANDEZ**, Accused.	Promulgated: MAY 15 2024, 1:40PM

x - x

RESOLUTION

On 06 December 2022, plaintiff filed before this Court an Information[1] against herein accused **MICAH MOTOR, INC., MAURICE DIZON, JR.** and **JOY D. FERNANDEZ** (collectively, "**accused**"), for violation of Section 255[2], in relation to Sections 253(d)[3] and 256[4], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the accusatory portion of which reads:

> ...
>
> That on or about July 9, 2018, in Manila, and within the jurisdiction of this Honorable Court, Micah Motor, Inc., a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, Maurice T. Dizon, Jr. and Joy D. Fernandez, being its president and treasurer, respectively, with obligation under

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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.* — ...

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.* — ...

> the law to file income tax returns and pay the correct income tax, did then and there, willfully, unlawfully and feloniously fail to pay deficiency income tax for taxable year **2013**, despite final assessment and formal demand to pay, including the services of several prior and post notices and demands, the latest being the Final Notice Before Seizure dated July 9, 2018, to the damage and prejudice of the Government in the amount of Two Million One Hundred Thirty[-]Eight Thousand Three Hundred Eighty-Five Pesos and Ninety-Nine Centavos (**Php 2,138,385.99**), exclusive of surcharge and interest.
>
> **CONTRARY TO LAW.**
>
> ...

Plaintiff attached the following supporting documents to the Information for the Court's examination:

1. Certified True Copy of the Department of Justice (**DOJ**) Resolution dated 02 February 2021, signed by Assistant State Prosecutor Hjalmar M. Quintana (**ASP Quintana**), with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;[5]

2. Copy of the National Prosecution Service Investigation Data Form dated 11 April 2019;[6]

3. Copy of the Referral Letter dated 11 April 2019 of the Bureau of Internal Revenue (**BIR**) Commissioner Caesar R. Dulay, addressed to Secretary of Justice Menardo I. Guevarra;[7] and,

4. Copy of the Joint Complaint-Affidavit dated 11 April 2019[8] of Revenue Officers (**ROs**) Aileen R. Sarreal (**Sarreal**) and Sonia SD Albiento (**Albiento**), with attached Annexes "A" to "EE", inclusive of sub-markings.[9]

In compliance with the Court's directive in the Resolution dated 18 January 2023[10], on 20 February 2023, plaintiff filed *via* courier its Explanation dated 16 February 2023[11], setting forth the reason for the filing of the present Information against accused notwithstanding the

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5 Division Docket, pp. 7-10.
6 Id., p. 11.
7 Id., pp. 12-13.
8 Id., pp. 14-19.
9 Id., pp. 20-56.
10 Id., pp. 58-60.
11 Id., pp. 63-64.

DOJ Resolution dated 02 February 2021[12], which dismissed the complaint against accused. Plaintiff attached therein a certified true copy of another DOJ Resolution dated 04 May 2022[13], which resolved the BIR's Motion for Reconsideration (**MR**) and granted its prayer to file the present Information against accused.

Pursuant to Section 4[14] of Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the Court shall proceed to determine if probable cause exists for the issuance of a warrant of arrest. In the said provision, the Court shall go over the preliminary pieces of evidence submitted by the plaintiff and accordingly attached to the Information filed against the accused. In the same provision, it is also provided that the Court may dismiss the case if the evidence fails to establish probable cause.

In a Resolution dated 30 March 2023[15], the Court found probable cause for the Issuance of Warrants of Arrest against accused Maurice Dizon, Jr. and Joy D. Fernandez, and set the amount of bail at ₱60,000.00 each. Thus, on 31 March 2023, the Warrants of Arrest were issued.[16]

The Court's subsequent actions and resolutions dealt with the Returns of Warrant of Arrest filed by the authorities, and the Court's order for the latter to enforce the outstanding Alias Warrants of Arrest issued on 09 May 2023[17], and to exert diligent efforts to ascertain the whereabouts of accused.

Meanwhile, during a periodic inventory of cases, the Court had a chance to once again review the records of the case.

After another careful consideration of the records, this Court finds that the right to institute the criminal action has already prescribed.

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12 Supra at note 5.
13 Division Docket, pp. 69-72.
14 SEC. 4. *Warrant of arrest.* — Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.
15 Division Docket, pp. 75-77.
16 Id., pp. 78-79.
17 Id., pp. 94-95.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[18] (**Lim**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz*:

> ...
>
> 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 allot[t]ed period. The two <u>criminal informations</u>, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
>
> ...

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[19] (**Tupaz**), where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> ...
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. 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.** ...
>
> ...

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18 G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

19 G.R. No. 127777, 01 October 1999; Citations omitted, italics in the original text and emphasis supplied.

As alleged in the Joint Complaint-Affidavit filed by ROs Sarreal and Albiento, the Formal Letters of Demand (**FLDs**) with Details of Discrepancies and Assessment Notices (**ANs**), all dated 19 December 2016, were issued and served upon accused on **22 December 2016** *via* substituted service to a certain Angelica Estebal.[20]

Per DOJ Resolution dated 04 May 2022[21], accused allegedly failed to file a protest against the FLDs and ANs within the thirty (30)-day period from receipt thereof, as provided under Section 228[22] of the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 12-99[23], as amended. As such, the deficiency income tax assessments became final, executory and demandable on **22 January 2017** (the day after the last day for filing a protest against the FLDs and ANs) and on such date the offense is "committed" for purposes of the five (5)-year prescriptive period.

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.[24]
> ...

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20 Memorandum of Service, Annex "O", Division Docket, p. 40.
21 Supra at note 13.
22 **SEC. 228**. *Protesting of Assessment.* — ...
23 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
24 Italics in the original text and emphasis supplied.

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 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.[25] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In *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.**

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

...

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 [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.[26]

...

Plaintiff had five (5) years from 21 January 2017 (*i.e.*, the last day for filing a protest against the FLDs and ANs), or until **21 January 2022**, within which to file the Information in court. Since the subject Information was filed only on **06 December 2022**, *five (5) years, eleven (11) months and fourteen (14) days have elapsed* since the commission of the violation on **22 January 2017** and the criminal action had already *prescribed for ten (10) months and nineteen (19) days* reckoned from **21 January 2022** (*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

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26 Supra at note 21; Citation omitted, italics in the original text, and emphasis supplied.

> 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.**[27]
>
> . . .

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.[28]

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.[29]

Again, given that the Information[30] was filed on **06 December 2022**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **21 January 2022**, plaintiff's right to initiate this case against the accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

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27 Italics in the original text and emphasis supplied.
28 See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
29 Id.
30 Supra at note 1.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[31] Evidently, in this case, prescription has automatically set in when 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.[32] 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 considerations, CTA Criminal Case No. O-1009 is hereby **DISMISSED** by reason of prescription of the offense charged.

The Alias Warrants of Arrest issued against accused Maurice Dizon, Jr. and Joy D. Fernandez are hereby **RECALLED** and **SET ASIDE**.

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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31 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

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