**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| **PEOPLE OF THE PHILIPPINES, as represented by the Solicitor General through the Bureau of Internal Revenue,** *Petitioner,* | **CTA *EB* CRIM. NO. 131** (CTA Crim Case No. O-980) |
| | *Present:* |
| - versus - | **DEL ROSARIO,** *P.J.* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **HI-BUILD CONSTRUCTION, INC., (Lot 1, Block 7, Mercado Village, Pulong, Sta. Rosa, Laguna), ROMEO P. AALA (Don Jose, Sta. Rosa, Laguna), RONALD P. SADSAD (Pulo, Cabuyao, Laguna),** *Respondents.* | Promulgated: OCT 29 2024 11:59 a.m. |

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## DECISION

***CUI-DAVID, J.:***

Before the Court *En Banc* is a *Verified Petition for Review (of the Resolution dated July 26, 2023)*[1] filed by the People of the Philippines (Petitioner) through registered mail on August 10, 2023, praying for the reversal and setting aside of the twin Resolutions dated April 25, 2023, and July 18, 2023 (assailed Resolutions), both rendered by this Court's First Division in CTA Crim. Case No. O-980, entitled *People of the Philippines v. Hi-Build Construction, Inc., Romeo P. Aala (Don Jose, Sta. Rosa, Laguna), Ronald P. Sadsad (Pulo, Cabuyao, Laguna).*

The April 25, 2023 Resolution dismissed the case on the ground of prescription, while the July 18, 2023 Resolution denied petitioner's *Motion for Reconsideration (of the Resolution dated April 25, 2023).*

[1] *En Banc (EB)* Docket, pp. 1-20.

## THE PARTIES[2]

Petitioner is represented by the Bureau of Internal Revenue (BIR), a government agency mandated to collect national internal revenue taxes, and is further represented by the Commissioner of Internal Revenue through Revenue Officers (RO) Leopoldo Bulda, Amapola Jane C. San Juan, Janet Carmel C. Castillo, Ma. Camille Jean B. Bomiel, and Czarina May A. Umilin, all of legal ages, Filipinos, and with postal address at Room 704, BIR National Office Building, BIR Road, Diliman Quezon City, where summons, notices, and other legal processes of this Court may be served.

Respondent Hi-Build Construction, Inc. (Hi-Build) was registered with the Securities and Exchange Commission (SEC) on September 30, 1991 under Registration No. AS091196178 to engage in the business of general construction and other allied business. It is also registered with BIR RDO No. 057 with Taxpayer Identification Number (TIN) 000-849-419-000, and its registered address is Lot 1, Block 7, Mercado Village, Pulong, Sta. Rosa, Laguna, where it may be served with summons, notices, and other legal processes of this Court.

Co-respondents Romeo P. Aala and Ronald P. Sadsad are Hi-Build's responsible officers. Romeo P. Aala may be served with summons, notices, and other legal processes of this Court at his residential address at Don Jose, Sta. Rosa, Laguna, while Ronald P. Sadsad at Pulo, Cabuyao, Laguna.

## THE FACTS AND THE PROCEEDINGS

On December 5, 2022, petitioner filed an *Information*[3] charging respondents for violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That on or about January 4, 2016 or on dates subsequent thereto, in Sta Rosa City, Laguna, and within the jurisdiction of this Honorable Court, accused, ROMEO P. AALA and RONALD P. SADSAD, president and treasurer respectively, of accused HI-BUILD CONSTRUCTION, INC., a business establishment registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 000-848-419, and with registered business address at Lot 1, Block 7,

[2] Parties, Petition for Review, *EB* Docket, pp. 3-4.
[3] Division Docket, pp. 5-6.

> Mercado Village, Pulong, Sta. Rosa City, Laguna, as such required by law, rules and regulations to supply correct and accurate information in the income tax return of the said corporation and to pay the taxes due from it, did then and there, willfully, unlawfully, and feloniously fail to supply correct and accurate information in the income tax return of the said corporation and to pay its Income Tax Deficiency for the taxable year 2012 in the amount of Php15,625,840.95, exclusive of interest, penalties and surcharges, arising from a demandable and executory Assessment Notice/Formal Letter of Demand dated January 04, 2016, to the prejudice of the government in the aforementioned amount.
>
> CONTRARY TO LAW.

On January 13, 2023, the Court in Division, noting that some documentary evidence material to the allegation in the *Information* were not submitted, issued a Resolution[4] ordering petitioner to submit, within five (5) days from notice, the certified true copies of the following:

1. General Information Sheet (GIS) for the year 2016 of accused corporation;
2. Letter of Authority (LOA);
3. Preliminary Assessment Notice (PAN);
4. Formal Letter of Demand (FLD);
5. Audit Result/Assessment Notices (FAN); and,
6. Supporting documents material or relevant to the allegation in the instant *Information*.

In its *Manifestation with Partial Compliance*[5] filed through registered mail on February 15, 2023, and received by the Court in Division on February 21, 2023, petitioner submitted the following documents:

a. LOA dated October 19, 2013;
b. First Request for Presentation of Records;
c. Second and Final Request of Records;
d. Subpoena Duces Tecum and its Affidavit of Service;
e. PAN dated November 26, 2015, and its Acknowledgment Receipt;
f. FLD dated January 4, 2016, with Details of Discrepancies;
g. Audit Result/Assessment Notices;

[4] Division Docket, pp. 65-67.
[5] *Id.*, pp. 83-86.

h. Preliminary Collection Letter dated August 8, 2016, with Registry Return Card; and,
i. Warrant of Distraint and/or Levy.

Thereafter, in its *Manifestation with Compliance*[6] posted on February 27, 2023, petitioner stated that per Certification of Corporate Filing/Information issued by the SEC, Hi-Build filed its GIS in the years 2001 and 2007 to 2013, and did not file in 1996 to 2000, 2002 to 2006, and 2014 to 2022. As such, the prosecution can only submit a copy of Hi-Build's 2013 GIS.

Acting on the foregoing, and in resolving whether there is probable cause for the issuance of warrants of arrest against the accused, the Court in Division issued the first assailed Resolution of April 25, 2023, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, plaintiff's *Manifestation with Partial Compliance* and *Manifestation with Compliance* are hereby **NOTED**.
>
> The Court finds no probable cause to issue a warrant of arrest against the accused Hi-Build Construction, Inc., Romeo P. Aala and Ronald P. Sadsad, on the ground of prescription of the offense charged. Accordingly, CTA Crim. Case No. O-980 is hereby **DISMISSED**.
>
> **SO ORDERED**.

In dismissing the case, the Court in Division ruled that the failure of the prosecution to timely file the *Information* in Court within the five (5)-year prescriptive period from the finality of the assessment on March 2, 2016, renders the present case dismissible on the ground of prescription.

Unable to agree, petitioner filed a *Motion for Reconsideration (of the Resolution dated April 25, 2023)*,[7] but the same was denied in the second assailed Resolution of July 18, 2023.

Still unable to agree, petitioner elevated its case before the Court *En Banc via* this *Verified Petition for Review (of the Resolution dated July 26, 2023)* filed on August 10, 2023.

[6] Division Docket, pp. 116-118.
[7] *Id.*, pp. 147-155.

In a Minute Resolution[8] issued on September 12, 2023, the Court *En Banc* ordered respondents to file their comment on the *Verified Petition for Review (of the Resolution dated July 26, 2023)* within ten (10) days from notice.

On December 11, 2023, the Judicial Records Division reported[9] that the Minute Resolution dated September 12, 2023, was returned to this Court with the following notations:

1. Hi-Build Construction, Inc. – "MOVED OUT"
2. Ronald P. Sadsad – "INSUFFICIENT ADDRESS"
3. Romeo P. Aala – "DECEASED"

Acting on the foregoing, the Court *En Banc* issued a Resolution[10] dated March 8, 2024, ordering petitioner to (1) provide the new and correct addresses of respondents Hi-Build Construction, Inc. and Ronald P. Sadsad for the proper service of the Resolution dated September 12, 2023; and, (2) submit proof that accused Romeo P. Aala is already deceased.

In its *Compliance with Submission* [11] filed through registered mail on March 18, 2024, petitioner stated that the addresses of herein respondents are the only known addresses extracted from the available records of the BIR. Petitioner also indicated that it has no personal knowledge of the death of respondent Romeo P. Aala and that it only came to know of the alleged demise through the Resolution dated March 8, 2024. Hence, it cannot submit proof that respondent Romeo P. Aala is already deceased.

In the Resolution promulgated on May 24, 2024, [12] the Court *En Banc* ordered petitioner to submit additional information regarding the addresses of herein respondents and proof that respondent Romeo P. Aala is already deceased within ten (10) days from notice.

In its *Manifestation*[13] posted on June 6, 2024, and received by the Court on June 14, 2024, petitioner reiterated its *Compliance* dated March 18, 2024, that the addresses as stated in the above caption of the instant case are the only known addresses extracted from the available records of the BIR. It also

[8] *EB* Docket, p. 44.
[9] *Id.*, p. 45.
[10] *Id.*, pp. 47-49.
[11] *Id.*, pp. 50-53.
[12] *Id.*, pp. 64-66.
[13] *Id.*, pp. 67-69.

asserted that it had no personal knowledge of the death of respondent Romeo P. Aala.

Records show that the Resolution dated March 8, 2024, was likewise returned to this Court with the same notations as appearing in the envelopes of the Resolution dated September 12, 2023. Thus, considering the circumstances surrounding the case, the Court *En Banc* resolved that the Resolutions dated September 12, 2023, and March 8, 2024, are deemed served to respondents Hi-Build, Romeo P. Aala, and Ronald P. Sadsad. And since respondents failed to file their comment within the given period, the Court *En Banc* also resolved to submit the case for decision.[14]

Hence, this Decision.

## ASSIGNMENT OF ERROR

Petitioner assigns the following error allegedly committed by the Court in Division:

> THE CTA – FIRST DIVISION ERRED WHEN IT DISMISSED THE CASE AGAINST RESPONDENT HI-BUILD AND ITS RESPONSIBLE OFFICERS FOR VIOLATION OF SECTION 255 OR DELIBERATE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION FOR THE TAXABLE YEAR 2012 ON THE GROUND OF PRESCRIPTION.

Petitioner maintains that the Court in Division erred in dismissing the case against respondents on the ground of prescription. It contends that Section 281 of the NIRC of 1997, as amended, established the prescriptive period for violations of any provision of the Code. Petitioner points out that a very similar provision to Section 281 of the NIRC of 1997, as amended, is found in Section 2 of Act No. 3326,[15] as amended by Act No. 3763.

[14] Resolution dated August 5, 2024, *EB* Docket, pp. 74-76.
[15] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

Allegedly, in the case of *Republic v. Cojuangco, Jr.*,[16] the Supreme Court ruled that under Section 2 of Act No. 3326, there are two (2) rules in determining when the prescriptive period shall begin: the *first rule* contemplates a case where the commission of the offense or violation is known, and the *second rule* is when the commission of the violation is not known.

According to petitioner, the case of *Tupaz v. Ulep*[17] is an example of the *first rule* where the offense committed is known to the BIR. In the said case, *Tupaz* was charged for non-payment of the deficiency corporate income tax for the year 1979. *Tupaz* alleged that the offense has already prescribed as the offense was committed in April 1980, when he filed his 1979 Income Tax Return (ITR), but the preliminary investigation was filed with the Department of Justice (DOJ) only on June 8, 1989. However, facts show that the BIR issued a notice of assessment on June 16, 1984. Hence, the Supreme Court ruled that it was only when the assessment had become final and unappealable that the prescriptive period commenced to run.

For petitioner, in applying Section 281, the prescriptive period commences to run from the commission of the offense, which, in the said case, is the violation for willful refusal to pay the deficiency taxes, which can only be committed once notice and demand had been made to the taxpayer. Prior to this, the taxpayer cannot be said to be in violation for willfully refusing to pay the taxes, as such an offense is only committed after the finality of the assessment coupled with the taxpayer's willful refusal to pay within the allotted period.

The case of *Lim v. Court of Appeals*,[18] on the other hand, illustrates the *second rule* where the date of commission of the office is unknown, in which case the prescriptive period commences to run upon discovery of the offense and the institution of judicial proceedings for its investigation and punishment. According to petitioner, in *Lim v. Court of Appeals*, the unknown offense was filing a fraudulent consolidated ITR with the intent to evade tax. Applying Section 281, since the offense was unknown, the five (5)-year prescriptive period commenced from the discovery and institution of the judicial proceedings.

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[16] G.R. No. 139930, June 26, 2012.
[17] G.R. No. 127777, October 1, 1999.
[18] G.R. Nos. L-48134-37, October 18, 1990.

In this case, petitioner submits that the *second rule* is applicable as the commission of the violation was unknown. Allegedly, what was unknown was the willful failure to supply correct and accurate information in accused's ITRs, Quarterly Value-Added Tax Returns, and Withholding Tax – Expanded (1601-E) Returns for taxable year 2012, with intent to evade taxes. Thus, applying the *second rule*, petitioner asserts that prescription had not set in, as the prescriptive period, in this case, began to run on February 28, 2019, when the BIR filed a complaint for violation of Section 255 in relation to Sections 253(d) and 256 of the Tax Code, against respondents with the DOJ. Prescription was also interrupted because proceedings were instituted on the same date, says petitioner.

Likewise, petitioner asserts that respondents should be held liable for deliberate failure to supply correct and accurate information in the ITR for taxable year 2012, in violation of Section 255 of the NIRC of 1997, as amended.

Citing Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations No. 18-2013, petitioner submits that respondents have thirty (30) days from receipt of the FAN/FLD to file a protest. However, respondents did not file a protest to contest the assessment within the reglementary period. Thus, the assessment had become final, executory, and demandable pursuant to prevailing laws and regulations.

According to petitioner, the obstinate failure and refusal of respondents to pay the long overdue deficiency tax assessments, despite repeated demands, constitutes a willful failure to pay taxes due to the government in violation of Section 255 of the NIRC of 1997, as amended.

## THE COURT EN BANC'S RULING

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

***The present Verified Petition for Review (of the Resolution dated July 26, 2023) was seasonably filed; hence, the Court En Banc has jurisdiction over this case.***

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Records show that petitioner received the Resolution dated July 18, 2023, which denied its *Motion for Reconsideration (of the Resolution dated April 25, 2023)* on July 26, 2023.[19] Thus, petitioner had fifteen (15) days from July 26, 2023, or until August 10, 2023, to file his *Petition for Review* before the Court *En Banc.*

Evidently, filing the instant *Verified Petition for Review (of the Resolution dated July 26, 2023)* through registered mail on August 10, 2023, is on time. Hence, the Court *En Banc* validly acquired jurisdiction over this case.

Now, on the merits.

***The government's right to prosecute the case has already prescribed.***

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription

[19] Notice of Resolution, *EB* Docket, p. 56.

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for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period is interrupted.[20]

Relevantly, Section 281 of the 1997 NIRC, as amended, states:

> 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. (*Boldfacing and underscoring supplied*)

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode*: From the day of the commission of the violation of the law; or,

2. *Second Mode*: When 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 the case at bar, the *Information* filed against respondents was for willful failure to supply correct and accurate information in the income tax return and pay the deficiency income tax for taxable year 2012, under Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[21] (*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 the willful refusal to pay the taxes due within the allotted period, *viz:*

[20] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006.
[21] G.R. Nos. 48134-37, October 18, 1990.

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
> > "(b) Assessment and payment of deficiency tax. - After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue." (*Emphasis on the original*)
>
> 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. **<u>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 allotted period</u>**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. [*Emphasis and underscoring supplied*]

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[22] which states:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990 in the case entitled "*Emilio E. Lim, Sr., et al. vs. Court of Appeals, et al.*", G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*

[22] SUBJECT: Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 (now Section 281) of the Tax Code.

> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
> a) The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.

This pronouncement in *Lim* was echoed in *Petronila C. Tupaz v. Honorable Benedicta B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*,[23] where the Supreme Court ruled that the crime of willful failure to pay tax, "*by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.*"

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "*when proceedings are instituted against the guilty persons.*" This is explained in *Lim* to mean *the time when the Information is filed with the Court.*[24]

Such ruling that the filing of information in Court interrupts the running of the prescriptive period is also consistent with Section 2, Rule 9 of the RRCTA, which reads as follows:

> 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.

[23] G.R. No. 127777. October 1. 1999.
[24] G.R. Nos. L-48134-37, October 18, 1990.

> **The institution of the criminal action shall interrupt the running of the period of prescription.** (*Boldfacing supplied*)

From the foregoing, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from when the payment period lapsed without any payment or appeal being made by the taxpayer. Prescription continues to run until the *Information* is filed in court.

In the instant case, petitioner asserts that the *Second Mode* for the commencement of the period of prescription applies (*i.e.*, when the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment). According to petitioner, the "*commission of the violation was not known. Specifically, what was unknown was the willful failure to supply correct and accurate information in Accused's ITRs and QVATRs for taxable year 2012, with intent to evade taxes.*" Hence, petitioner submits that prescription had not set in as the prescriptive period on this case began to run on February 28, 2019, when the BIR filed a complaint with the DOJ.

However, petitioner's assertion lacks support in the record of the case. The truth is, petitioner's assertion that "*what was unknown was the willful failure to supply correct and accurate information*" is contradicted by its own admission in the *Joint Complaint-Affidavit*[25] filed before the DOJ, to wit:

> "6. On October 19, 2013, BIR issued Letter of Authority (LOA) No. LOA-057-2013-00000183 with SN: Ela201100033011, authorizing Revenue Officer (RO) Eden Sandoval and Group Supervisor (GS) Leopoldo Bulda to examine the books of accounts and other accounting records of HI-BUILD on all internal revenue taxes for taxable year 2012. The LOA was personally received by Ms. Amalia A. Saylon, HI-BUILD's authorized representative. xxx
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> xxx xxx xxx
>
> 9. On November 26, 2015, the Commissioner of Internal Revenue represented by Gerardo R. Florendo, Regional Director of Revenue Region No. 9 – San Pablo City, caused the issuance of a Preliminary Assessment Notice (PAN), based on best evidence obtainable, which was duly served by registered mail and substituted service through Ms. Juliet Suarez,

[25] Division Docket, pp. 53-60.

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informing the said corporation of its assessed deficiency Income Taxes (IT) in the amount of Php23,802,650.87, Value Added Taxes (VAT) in the amount of Php9,585,606.54, Expanded Withholding Tax (EWT) in the amount of Php889,001.53, and Compromise Penalty (CP) of Php205,000.00 for taxable year 2012. xxx

10. On January 4, 2016, the Formal Letter of Demand (FLD) with Details of Discrepancy was issued by Regional Director Gerardo R. Florendo and was duly served by personal service, assessing and demanding payments for the following tax liabilities for taxable year 2012: xxx

11. No Motion for Reconsideration with the Commissioner of Internal Revenue of (*sic*) appeal to the Court of Tax Appeal was filed by HI-BUILD from the receipt of the FLD. **For its failure to file the same within thirty (30) days from receipt of the FLD, as provided for in Section 228 of the NIRC of 1997, as implemented by RR No. 12-93, the assessment had become FINAL, EXECUTORY, UNAPPELABLE and DEMANDABLE.**

xxx xxx xxx

14. **However, despite such demands and the lapse of a considerable length of time, HI-BUILD, to date, has still failed and adamantly refused to pay the aforementioned deficiency taxes due.**

xxx xxx xxx

16. **The obstinate failure and refusal of HI-BUILD CONSTRUCTION, INC. to pay its long overdue deficiency tax assessments, despite repeated demands, <u>constitute willful failure to pay taxes due to the government in violation of Section 255 of the NIRC of 1997</u>.**" (*Boldfacing and underscoring supplied*)

xxx xxx xxx

In fact, in his Referral Letter[26] to the DOJ dated February 26, 2019, then Commissioner Caesar R. Dulay specifically stated, to wit:

Sir:

I have the honor to refer to your Office for preliminary investigation the attached Joint Complaint-Affidavit together with the annexes of Revenue Officers LEOPOLDO BULDA, AMAPOLA JANE C. SAN JUAN, JANET CARMEL C.

[26] Division Docket, pp. 61-62.

> CASTILLO, MA. CAMILLE JEAN B. BOMIEL, and CZARINA MAY A. UMILIN, Revenue Officers (ROs) of the Bureau of Internal Revenue (BIR), Filipinos, of legal age, and with office address c/o Rm. 704, 7th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, recommending the criminal prosecution of HI-BUILD CONSTRUCTION, INC. and its responsible officers, ROMEO P. AALA (President) and RONALD P. SADSAD (Treasurer), for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. They are being charged for **Willful Failure to Pay Taxes for taxable year 2012** amounting to THIRTY-FOUR MILLION SEVEN HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED FIFTY-ONE PESOS AND 69/100 CENTAVOS (Php34,738,951.85) for the Income Tax, Value-Added Tax and Expanded Withholding Tax inclusive of surcharge and interest, all in violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, which states as follows: xxx (*Emphases supplied*)

One of the powers granted to the Commissioner of Internal Revenue under the NIRC of 1997, as amended, is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC, as amended, is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — **After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand** from the Commissioner or from his duly authorized representative. x x x" (*Boldfacing and underscoring supplied*)

Here, an assessment was issued against respondents, demanding the payment of deficiency tax assessed. However, respondents failed to pay the assessed deficiency tax despite notice and demand.

When the offense charged involves a taxpayer's **refusal to pay the taxes due**, the date of commission of which is known, the five (5)-year prescriptive period commences to run from the date the assessment notices became final and executory and continues to run until the filing of the *Information* in Court.

Thus, the Court *En Banc* is one with the Court in Division when it ruled as follows:

> Indeed, the Lim case and the Tupaz case were in unison in holding that the offense of willful failure to pay tax is committed upon the finality of the assessment, coupled with the taxpayer's deliberate refusal to pay taxes due. However, these cases differ as to when interruption of the five (5)-year prescriptive period under Section 281 of the 1997 NIRC, as amended, occurs. In the Lim case, the prescriptive period was interrupted by the filing of Information in court, whereas in the Tupaz case, said prescriptive period was interrupted by the filing of the Complaint before the Department of Justice (DOJ) for the preliminary investigation.
>
> On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:
>
> xxx xxx xxx
>
> The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.
>
> In the instant Information, the accused are being charged for their failure to supply correct and accurate information in their Income Tax Return (ITR) and to pay their Income Tax Deficiency for taxable year 2012 in the amount of Php15,625,840.95.
>
> Likewise, it was also alleged by the complainants-BIR Revenue Officers in their Joint Complaint-Affidavit that the accused failed to file a motion for reconsideration with the Commissioner of Internal Revenue or an appeal before this Court within thirty (30) days from receipt of the Formal Letter of Demand (FLD). Hence, the assessment became final, executory, unappealable, and demandable.
>
> It appears from the records of the case that the FLD dated January 4, 2016 covering the taxable year 2012 was served to and received by accused on February 1, 2016.

> There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on March 2, 2016. Sans payment thereof by accused, the tax offense, in this case, was committed on March 2, 2016.
>
> Counting from March 2, 2016, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on March 2, 2021. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on December 5, 2022. (*Citations omitted*)

**WHEREFORE**, premises considered, the *Verified Petition for Review (of the Resolution dated July 26, 2023)* is **DENIED** for lack of merit.

Accordingly, the assailed Resolutions dated April 25, 2023, and July 18, 2023, both rendered by this Court's First Division in CTA Crim. Case No. O-980, are **AFFIRMED**.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**ON OFFICIAL BUSINESS**
**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

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## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice