REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

WORKLINKS GENERAL SERVICES, CO.
Rm. 406 David Bldg. I 567 Shaw Boulevard Mandaluyong City

VICTORIA J. ADRIAS,
-do-
(at large),
Accused.

CTA Crim. Case No. O-751
(NPS Docket No. XVI-INV-17L-00355)
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

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

Promulgated:
JUN 20 2024
11:50 a.m.

x- x

RESOLUTION

On June 20, 2019, an Information was filed against accused Worklinks General Services, Co. and Victoria J. Adrias. Said accused were charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, or the crime of Willful Failure to Pay Tax.

For easy reference, the accusatory portion of the Information reads:

> "That on or about August 22, 2017 and thereafter, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused Worklinks General Services, Co., a general partnership registered with the Securities and Exchange Commission, through General Manager, accused Victoria J. Adrias, did then and there, willfully, unlawfully and feloniously fail to pay the basic income tax deficiencies for taxable year 2010 in the amount of One Million Five Hundred Forty Six Thousand Two Hundred Six Pesos and Eighty Seven Centavos (Php1,546,206.87), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of demand before suit issued on August 22, 2017, to the damage and prejudice of the government."[1]

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[1] Docket, CTA Crim. Case No. O-751, Information, pp. 8-10.

Meanwhile, the following documents were attached to subject Information:

1. Resolution dated March 19, 2018 issued by Assistant State Prosecutor Mary Ann S. Parong, recommending the filing of Informations against the accused for violation of Section 255 of the 1997 NIRC, as amended, for the crime of willful failure to pay deficiency income tax, value added tax, and expanded withholding tax (EWT), all for the taxable year (TY) 2010;

2. Investigation Data Form;

3. Referral Letter dated December 14, 2017 for preliminary investigation and filing of information against accused, issued by Commissioner of Internal Revenue (CIR) Caesar R. Dulay; and

4. Joint Complaint-Affidavit of Revenue Officers (ROs) Cheryl A Hernandez, Adoracion C. Tayao, and Margarita R. Jose, executed on December 14, 2017, with the following certified true copies, to wit:

    a. Letter of Authority with SN. eLA201000064093 (LOA-041-2011-00000767 dated August 26, 2011;[2]
    b. 1st Notice for Presentation of Records-Checklist of Requirements dated August 31, 2011;[3]
    c. Second & Final Request for Presentation of Books of Accounts and Other accounting Records;[4]
    d. Recommendation for Issuance of Subpoena Duces Tecum;[5]
    e. Subpoena Duces Tecum dated August 24, 2012;[6]
    f. Post Reporting Notice dated April 22, 2013;[7]
    g. Memorandum dated May 17, 2013;[8]

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[2] *Id.*, Annex "A", p. 26.
[3] *Id.*, Annex "B", p. 27.
[4] *Id.*, Annex "C", p. 28.
[5] *Id.*, Annex "D", p. 29.
[6] *Id.*, Annex "E", p. 30.
[7] Docket, Annex "F", p. 31.
[8] *Id.*, Annex "G", pp. 32-33.

h. Preliminary Assessment Notice dated December 27, 2013 with Details of Discrepancies;[9]
i. Formal Letter of Demand (FLD) dated January 15, 2014 with Details of Discrepancies;[10]
j. Assessment Notice dated January 15, 2014 for income tax;[11]
k. Assessment Notice dated January 15, 2014 for value-added tax;[12]
l. Assessment Notice dated January 15, 2014 for EWT;[13]
m. Preliminary Collection Letter with No. PCL-2014-05-15-00092 dated May 14, 2014;[14]
n. Final Notice Before Seizure with No. PCL-2014-07-11-00353 dated July 11, 2014;[15]
o. Warrant of Distraint and/or Levy with No. RR7-2014-630;[16]
p. Warrant of Garnishment addressed to East West Banking Corporation;[17]
q. Warrant of Garnishment addressed to United Coconut Planters Bank;[18]
r. Warrant of Garnishment addressed to Union Bank of the Philippines;[19]
s. Warrant of Garnishment addressed to Hongkong Shanghai Banking Corporation;[20]
t. Warrant of Garnishment addressed to China Banking Corporation;[21]
u. Warrant of Garnishment addressed to Banco De Oro;[22]
v. Warrant of Garnishment addressed to Rizal Commercial Banking Corporation;[23]

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[9] *Id.*, Annex "H", pp. 34-36.
[10] *Id.*, Annex "I", pp. 37-39.
[11] *Id.*, Annex "I-1", p. 40.
[12] *Id.*, Annex "I-2", p. 41.
[13] *Id.*, Annex "I-3", p. 42.
[14] *Id.*, Annex "J", p. 43.
[15] *Id.*, Annex "K", p. 44.
[16] *Id.*, Annex "L", p. 45.
[17] *Id.*, Annex "M", p. 46.
[18] *Id.*, Annex "N", p. 47.
[19] *Id.*, Annex "O", p. 48.
[20] *Id.*, Annex "P", p. 49.
[21] *Id.*, Annex "Q", p. 50.
[22] *Id.*, Annex "R", p. 51.
[23] Docket, Annex "S", p. 52.

w. Warrant of Garnishment addressed to Land Bank of the Philippines;[24]
x. Warrant of Garnishment addressed to Metropolitan Bank and Trust Company;[25]
y. Warrant of Garnishment addressed to Philippine National Bank; [26]
z. Warrant of Garnishment addressed to Security Bank and Trust Company;[27] and
aa. Demand Before Suit.[28]

However, the Court observed some discrepancies in the Information and directed the plaintiff to submit an amended Information to correct the cited discrepancies.[29]

On July 19, 2019, the plaintiff submitted[30] its Amended Information[31] and other required documents.[32]

On August 5, 2019, finding probable cause to charge the accused, the Court issued a Resolution directing the issuance of Warrant of Arrest for the said accused.[33]

On September 30, 2019,[34] the warrant of arrest was returned but not served because subject accused cannot be located in the indicated address or the whereabouts are unknown. Hence, the Court issued a Resolution directing the issuance of an Alias Warrant of Arrest.[35]

On July 21, 2020, the Court directed the Chief of Philippine National Police (PNP) to submit a report on the service of said Alias Warrant of Arrest.[36] However, the PNP reported that the accused cannot be located.[37]

On October 8, 2020, the Court directed the director of the National Bureau of Investigation (NBI) and the Chief, PNP to

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[24] *Id.*, Annex "T", p. 53.
[25] *Id.*, Annex "U", p. 54.
[26] *Id.*, Annex "V", p. 55.
[27] *Id.*, Annex "W", p. 56.
[28] *Id.*, Annex "X", p. 57.
[29] *Id.*, Resolution dated July 10, 2019, pp. 59-61.
[30] *Id.*, Motion to Admit Attached Amended Information, pp. 62-64.
[31] *Id.*, pp. 65-67.
[32] *Id.*, Compliance, pp. 68-69.
[33] *Id.*, Resolution dated August 5, 2019, pp. 151-153.
[34] *Id.*, Return of Warrant of Arrest dated September 25, 2019, p. 163.
[35] *Id.*, Resolution dated October 23, 2019, pp. 173-174.
[36] Docket, Resolution dated July 21, 2020, pp. 185-186.
[37] *Id.*, Endorsement Letter dated August 5, 2020, p. 187.

direct the enforcement of the outstanding Alias Warrant of Arrest and the CIR to ascertain the whereabouts of the accused.[38] However, no report was made by either of the abovementioned public officer to this Court.[39]

On December 23, 2020, the PNP Solsona Municipal Police Station in Ilocos Norte reported to this Court that the Alias Warrant was not served as the accused cannot be located within its area of responsibility.[40]

Thus, on February 1, 2021, considering that the accused has not yet been apprehended, the Court issued a Resolution[41] where it archived the instant case.

On May 23, 2023, the case was assigned in Court of Tax Appeals (CTA) Third Division due to reorganization of the Court in Division in view of the retirement of Justice Erlinda P. Uy.[42]

After revisiting and reviewing the records of the present case, the Court resolves to dismiss the same on the ground of prescription.

Section 281 of the 1997 NIRC, 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. ...."

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

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[38] *Id.*, Resolution dated October 8, 2020, pp. 209-210.
[39] *Id.*, Records Verification dated December 23, 2020, p. 211.
[40] *Id.*, Letter dated December 3, 2020, pp. 212-213.
[41] *Id.*, Resolution dated February 1, 2021, p. 223.
[42] *Id.*, CTA Administrative Circular No. 01-2023 dated May 23, 2023, p. 224.

(2) the time the period of prescription started to run; and, (3) the time the prescriptive period was interrupted.[43]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the 1997 NIRC, as amended, is five (5) years.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.,* interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[44], accused therein were charged for their refusal to pay deficiency income tax (IT) due for TYs 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> "... 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 wilful refusal to pay the taxes due within the alloted period. The two **criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred**..." (*Boldfacing supplied*)

Then came the *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*[45] case. There, accused was charged as an officer of El Oro Engravers Corporation for willful failure to pay corporate IT for TY 1979. Among the defenses she posed is that

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[43] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.,* G.R. No. 135715, April 13, 2011.
[44] G.R. Nos. L-48134-37, October 18, 1990.
[45] G.R. No. 127777, October 1, 1999.

said offense had prescribed. The Supreme Court ruled in the negative, ratiocinating in this wise:

> ".... 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. 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.** ..."

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 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 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:

> "**SEC. 2.** *Institution of criminal actions.* – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve

> their filing. In criminal actions involving violations of the tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing. (Rules of Court, Rule 110, sec. 2a; n)
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a)" (*Boldfacing supplied*)

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, accused is being charged for failure to pay its Income Tax Deficiency for TY 2010 in the amount of Php1,546,206.87.

Likewise, it was also alleged by the Complainants that the FLD and the Assessment Notices were personally received by the accused's authorized representative, a certain Ms. Victoria Adrias and yet failed to protest said assessment. Hence, the assessment became final, executory, and demandable.[46]

Based on the records of the case, as shown in the Assessment Notice for deficiency income tax, marked as Annex "I-1",[47] a certain Ms. Victoria Adrias received such notice on January 15, 2014.

There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on February 14, 2014. *Sans* payment thereof by accused, the tax offense, in this case, was *committed* on February 14, 2014.

Counting from February 14, 2014, the five (5)-year prescriptive period to indict accused for failure to pay tax lapsed on February 14, 2019. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on June 20, 2019.

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[46] Docket, Joint Complaint-Affidavit, p. 22.
[47] *Supra*, Note 11.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription.

ACCORDINGLY, CTA Crim. Case No. O-751 is **DISMISSED** on the ground of prescription.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice