REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-115** For: Violation of Section 255 in relation to Section 253 (d) & 256, Tax Code of 1997 as amended by Republic Act 8424
-versus-	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
PACIFICO Q. LIM c/o Dimsun Unlimited Inc. 901 Ongpin St., Sta.Cruz, Manila *Accused.*	Promulgated: AUG 07 2024 8:06 a.m.

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RESOLUTION

Accused Pacifico Q. Lim was charged for violation of Section 255 in relation to Section 253 (d) of the Tax Code of 1997 as amended by Republic Act 8424, the *Information* is hereunder quoted below:

> " That on or about February 23, 2004, in the City of Manila, Philippines, the said accused, being then the President/Authorized Officer and responsible officer of Dimsun Unlimited, Inc. with business address at 901 Ongpin cor. T. Alonzo Sts., Sta. Cruz, in said City, having filed his internal revenue tax of the latter for the year 2000 and after examination and audit of the same, it has been found that there is due collectibles from said Dimsun Unlimited, Inc. the following to wit:

Kind of Tax	Amount
Def. Income	P 1, 074, 384.01
Def. MCIT	166,240.20
Def. VAT	1,613,137.60
Def. WT	32,376.31
Def. EWT	73,746.42

> for the said year under BIR Assessment/Demand No. 31-2000, did then and there willfully and unlawfully fail and refuse and neglect to pay said taxes and without formally appealing the same despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P2,959,884.54, Philippine Currency."
>
> CONTRARY TO LAW."

In a *Resolution* dated March 19, 2009[1], the Court found the existence of probable cause to hold the accused for trial and ordered the issuance of a *Warrant of Arrest*. The *Warrant of Arrest* was issued on March 20, 2009[2].

Subsequently, on May 15, 2009, a *Return of Warrant* was submitted to the Court through registered mail and received on May 26, 2009. In the said *Return of Warrant*, it states that the subject of the *Warrant of* Arrest cannot be located in the given address despite diligent efforts exerted[3]. The same was noted by the Court in a *Resolution*[4] dated May 29, 2009 and an *Alias Warrant of Arrest* was issued[5].

On November 10, 2009, the Court issued a *Resolution*[6] archiving the case. The said *Resolution* is hereunder quoted, as follows:

> It appearing from the record of the above-entitled case that the Warrant of Arrest, dated March 20, 2009, has been returned unserved for the reason that "accused could not be found at said given address despite diligent efforts exerted", and in order that this case may not remain pending in the Court's docket for an indefinite period of time; the above-captioned case is hereby ARCHIVED, without prejudice to its revival immediately upon apprehension of the accused.
>
> Let a copy of this Resolution be furnished the Office of the Commissioner of Internal Revenue, in order that diligent efforts may be taken for the early apprehension of said accused.
>
> **SO ORDERED.**

Meanwhile, the number of criminal cases archived due to the authorities' failure to cause the arrest of the accused, as well as the successive dismissal of recent cases on the ground of prescription, prompted this Court to review the archived cases to determine whether

[1] Division Docket, page 28.
[2] Division Docket, page 29.
[3] Division Docket, page 34.
[4] Division Docket, page 37.
[5] Division Docket, page 38.
[6] Division Docket, page 43.

they were filed within the prescriptive period provided under Section 281 of the 1997 NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

Pursuant to Section 281 of the 1997 NIRC, as amended, states the prescription for violations of any provision of the NIRC, *viz.*:

> 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 date 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].

With the above provision, all violations of any provision of 1997 NIRC shall prescribe after five (5) years and shall begin to run from the date of the commission of the violation of the law.

The institution of criminal actions shall interrupt the running of the period of prescription as provided by Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), *to wit:*

> Section 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 Republic 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.
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> **The institution of criminal actions shall interrupt the running of the period of prescription.** (Emphasis supplied)

Based on the prosecutor's *Resolution*[9], it was alleged that the above-mentioned corporation failed to pay the following internal

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[9] Division Docket, page 3.

revenue tax obligation for the year 2000, to wit: Income Tax (IT), Minimum Corporate Income Tax (MCIT), Value-Added Tax (VAT), Withholding Tax (WT) and Expanded Withholding Tax (EWT). Further, he alleges that despite several demands made upon the said respondent and the service of Warrant of Distraint and/or Levy, it failed and refused to pay the aforesaid tax obligations.

Further, based on the *Affidavit* Atty. Gerlo C. Cacatian[10], the Assessment Notices dated January 23, 2004 for IT[11], MCIT[12], VAT[13], WT[14], and EWT[15] were sent to the taxpayer through registered mail under Registry Receipt No. 803534. The said tax assessments against accused became final, executory, and demandable considering that no protest was filed against it.

The Court observed that Registry Receipt No. 803534 was not attached to the *Affidavit* of Atty. Gerlo C. Cacatian. In view thereof, the Court cannot ascertain when the Assessment Notices were received by the taxpayer. Thus, the offense was committed after the due date reflected on the Assessment Notices which is February 23, 2004. As the offense of failure to pay tax under Section 255 of the 1997 NIRC, as amended, was committed on February 24, 2004, plaintiff had five (5) years from said date or until **February 24, 2009,** within which to file the *Information* in Court. Here, the *Information* was filed on March 12, 2009.

In view of the foregoing, the five (5) year prescriptive period commenced when the Assessment Notices became final, executory and demandable on February 23, 2004 and the prescriptive period to institute the criminal action lapsed on February 23, 2009. Thus, the subject *Information* filed on March 12, 2009 was clearly beyond the five (5) year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-115 is hereby **WITHDRAWN** from the archives. Moreover, the instant *Information* is hereby **DISMISSED** due to prescription of the offense charged. Let the *Warrant of Arrest* issued against accused be **RECALLED** and **SET ASIDE**.

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[10] Division Docket, page 7.
[11] Division Docket, page 10.
[12] Division Docket, page 12.
[13] Division Docket, page 14.
[14] Division Docket, page 18.
[15] Division Docket, page 16.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice