REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-1077** (NPS Docket No. XVI-INV-18C-00068)
-versus-	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
	Members:
ANGELITO O. DELA PEÑA Km. 17, Mc Arthur Highway, Malanday, Valenzuela City Or Prenza I, Marilao, Bulacan (-AT LARGE-) *Accused.*	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* Promulgated: SEP 05 2023 10:45 a.m.

x --- x

RESOLUTION

For the Court's resolution is an Information, filed on 10 August 2023. In the Information, the prosecution accuses Angelito O. Dela Peña for failing, refusing, and neglecting to pay his value-added tax obligation for the year 2007, in violation of ***Sec. 255 of the National Internal Revenue Code of 1997, as amended*** ("***NIRC***").

The Information must be dismissed for lack of jurisdiction.

The prescriptive period for prosecuting any violation of the ***NIRC*** is governed by ***Sec. 281*** of the same:

> "**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 the proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> x x x"
> (Emphasis supplied.)

From the above, for cases where the crime was known at the time it was committed, the prescriptive period begins on "the day of the commission of the violation of the law". The Supreme Court, in the influential case of ***Emilio E. Lim Sr. and Antonio Sun Lim v. Court of Appeals and People of the Philippines*** ("***Lim Case***"),[1] identified such date as the date on which a taxpayer receives the final notice of the Bureau of Internal Revenue's ("BIR") assessment:

> "**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."
> (Emphasis supplied.)

Sec. 2, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended ("***RRCTA***"), meanwhile, states that the prescriptive period is interrupted by the filing of an information before the Court of Tax Appeals ("CTA"):

> "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 filling of an information in the name of the People of the Philippines.** x x x
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**"
> (Emphasis supplied.)

This follows the Supreme Court's construction of the law in the aforementioned ***Lim Case***, which earlier identified the "filing of [an] information in court" as the event that finally ends the prescriptive period:

> "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 stands in the statute book (and to this day it has remained unchanged) **it would indeed seem**

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

> **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.**"
> (Italics in original; emphasis supplied.)

To summarize, in cases where a taxpayer refuses to pay its tax obligations, the prescriptive period begins upon the taxpayer's receipt of the BIR's final issuance regarding its assessment of said tax obligation and ends upon the filing of the relevant information before the CTA.

The present Information and its attachments unfortunately do not state, allege, or show the exact date on which accused received the BIR's Final Notice Before Seizure ("FNBS"), dated 14 February 2014. None of the attached Registry Return Notices, first filed with the Complaint before the Department of Justice ("DOJ"), pertain to the FNBS, as they all predate said issuance.[2] Indeed, in his Counter Affidavit filed before the DOJ, accused denies ever receiving any of the BIR's issuances regarding the assessment of the tax he allegedly refused to pay.[3] The prosecution, in the Information, instead used the date of the FNBS's issuance, 14 February 2014, as the date on which accused allegedly violated the ***NIRC***. Without any proof of the date of accused's actual receipt of the FNBS, the Court is constrained to also consider 14 February 2014 as the date on which accused allegedly committed the present violation.

The prosecution had five (5) years within which to file the instant Information before this Court, as discussed above. However, they filed this Information on 10 August 2023, or over nine (9) years after 14 February 2014. The Information was thus filed late, and the Court has no jurisdiction over this case.

As an aside, ***Sec. 281 of the NIRC*** identifies a second, more permissive starting point for the prescriptive period: the date on which a complaint is filed before the DOJ. This starting point, however, only applies to crimes which were not know at the time of their commission, such as crimes that involve fraud. It does not apply to the case at bar. No fraud was alleged in the instant Information, and its attachments do not reveal any factor that might justify using the second starting point. As such, the Court must use the date on which accused allegedly refused to pay his taxes, 14 February 2014, as the date on which the prescriptive period began.

Assuming *arguendo* that the alleged violation was not know at the time of its commission, perhaps because an element of fraud was involved, the Information would still have to be dismissed. The Complaint-Affidavit was

---

[2] *See* Annexes attached to the Complaint-Affidavit, dated 22 March 2018, Records.
[3] *See* Paragraphs 20-21, Counter Affidavit, p. 6, *id.*

filed before the DOJ on 22 March 2018.[4] If this filing was considered the starting point of the prescriptive period, the prosecution would have had until 22 March 2023 within which to file the instant Information. Their filing of the Information on 10 August 2023 would have thus still been late, and this Court would still have lost its jurisdiction over the case.

It must be stressed that this dismissal does not arise from an unthinking adherence to procedural rules uninterested in the dispensation of substantial justice. Taxpayers accused of violating the ***NIRC*** should not be made to indefinitely suffer the threat and dread of having an information filed against them. Taxes are the lifeblood of the Government, but that is all the more reason for those tasked with prosecuting the crime of tax evasion to act with due diligence and haste.

WHEREFORE, the instant Information is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On leave.)
CORAZON G. FERRER-FLORES
Associate Justice

---

[4] *See* DOJ Resolution, dated 22 November 2021, p. 1, *id.*; *see also* Data Investigation Form, *id.*