REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

VIRGILIO B. CASTILLO,
41 Havana St., BF Homes
Parañaque City
PRO HEALTH INTERNATIONAL, INC.
184 A. Aguirre Avenue, BF Homes
Parañaque City,
Accused.

CTA CRIM. CASE NO. O-664
(NPS Docket No. XVI-INV-11F-00233)

For Violation of Section 255 of Republic Act 8424 (NIRC of 1997, as amended), in relation to Sections 253 par. (d) of the same Code

Members:

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

Promulgated:

AUG 07 2024
8:10 a.m.

x - x

RESOLUTION

Accused Virgilio B. Castillo and Pro Health International Inc. (PHII), are charged for violation of Section 255, in relation to Section 253 (d) of the National Internal Revenue Code of 1997 (NIRC), as amended, in the Information filed on February 5, 2018, and Amended Information dated March 20, 2018, as quoted hereunder:

> The undersigned State Prosecutor of the Department of Justice, hereby accuses VIRGILIO B. CASTILLO and PRO Health International Inc. (PHII for brevity) for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sec. 253 (D) of the same code, committed as follows:
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> "That on or about February 14, 2007 up to the present, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the forenamed Accused VIRGILIO B. CASTILLO being the President of PHII and PRO HEALTH INTERNATIONAL INC. (PHII for brevity), and as such, required by law, rules and regulations to pay taxes due from the said corporation, did then and there willfully, unlawfully

and feloniously fail and refuse to pay the Value-Added-Tax (VAT) Deficiency for taxable year 2002 in the total amount of Two Million Three Hundred Sixty Thousand Six Hundred Three Pesos and Twenty Three Centavos (P2,360,603.23), exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives."

CONTRARY TO LAW.

In a *Resolution* dated April 4, 2018[1], the Court found probable cause to hold accused for trial and ordered the issuance of Warrant of Arrest against the accused.

On May 31, 2018, the Court issued a *Resolution*[2] noting the Return of Warrant of Arrest posted on May 17, 2018 by PO3 Arlyme Catacutan, Warrant Officer, Warrant & Subpoena Section of the Parañaque City Police Station, stating that the subject accused cannot be contacted, located or his whereabouts is unknown.

However, considering that the accused remained at-large, the Court resolved to issue an Alias Warrant of Arrest, and to archive the instant case, through its *Resolution* dated June 14, 2019[3], the relevant portion of which is quoted hereunder:

> Meanwhile, it appearing that to date, accused Virgilio B. Castillo still remains-at large up, or for more than six (6) months from the issuance of the Warrant of Arrest, and in order that this case may not remain pending in the Court's docket for an indefinite period of time, let this case be **ARCHIVED,** subject to its revival upon the arrest of the accused.
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> **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 they were filed within the prescriptive period provided under Section 281 of the NIRC, as amended. Upon revisiting the instant case, the Court finds that the same has prescribed.

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

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[1] Division Docket, pp. 401 to 403.
[2] Division Docket, p. 412.
[3] Division Docket, p. 416.

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 offended is absent from the Philippines. (*Emphasis Supplied*)

Based on the above-cited provision, all violations of any provision of the NIRC shall prescribe after five (5) years from the date of the commission of the violation of the law, or if the same be unknown, at the time of discovery thereof.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (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 action 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.

The institution of the criminal action shall interrupt the running of the period of prescription. (*Emphasis Supplied*)

The offense charged in the subject Information involves the accused's alleged willful failure to pay deficiency value-added tax (VAT). Based on jurisprudence,[4] the crime of willful failure to pay tax is committed only after receipt of the final notice and demand for

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[4] *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, G.R. No. L-48134-37, 18 October 1990 and *Petronilla C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777, 1 October 1999.

payment, coupled with the willful refusal to pay the taxes due within the allotted period.

A careful reading of the Prosecutor's Resolution[5] shows that on February 14, 2007, a Formal Assessment Notice (FAN) was issued against PHII addressed to accused Castillo, and served on February 15, 2007 upon PHII at 184 A. Aguirre Avenue, BF Homes, Parañaque City, and at the residence of accused Castillo. The FAN was alleged to have been received by a certain Jose Domingo, the designated caretaker. Both the Prosecutor's Resolution and the Complaint-Affidavit concluded that since the accused failed to file any administrative protest pursuant to Section 228 of the NIRC, the tax assessment has already become final, executory, unappealable and demandable.[6]

Based on the Prosecutor's Resolution, it can already be inferred that the subject Information was filed beyond the five (5)-year prescriptive period.

Taking into consideration that the FAN[7] was received on February 15, 2007, and no protest was filed within the period of thirty (30) days therefrom, the assessment became final and executory on March 18, 2007, after the lapse of the thirty (30)-day period. Thus, the plaintiff had five (5) years from March 18, 2007 or until **March 18, 2012**, within which to institute the criminal action before the Court. Unfortunately, the Information for the instant case was filed only on February 5, 2018.

In light of the foregoing, the Court finds that the Information subject of the instant case should be dismissed for being filed beyond the five (5)-year prescriptive period.

WHEREFORE, premises considered, CTA Crim. Case No. O-664 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**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[5] Resolution dated January 28, 2017, Division Docket, pp. 10 to 16.
[6] Resolution dated January 28, 2017, Division Docket, p. 13; Par. 10, Joint Complaint-Affidavit dated June 23, 2011, Division Docket, p. 363.
[7] Division Docket, pp. 18 to 27.

(On Leave)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice