REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

JAMES CARUNCHO MANIEGO,
Multi Dimension Trading
No. 830 Aurora Boulevard
Silangan D3, Cubao, Quezon City,
Accused.

CTA Crim. Case Nos. O-830 & O-831
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

NOV 11 2020 10:01 am

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RESOLUTION

In a Resolution dated October 2, 2020, the Court directed plaintiff to submit a document to show the date when accused received the Final Assessment Notice (FAN) dated November 10, 2009.

On October 22, 2020, plaintiff filed its *Compliance* informing the Court that upon request from the Quezon City Central Post Office relative to the date of receipt of the said FAN, Postmaster VI, Cecilia T. Tabares, issued a Certification that their office could no longer ascertain the date of delivery of the FAN mailed through Registered Letter Nos. 000551 which was allegedly mailed on January 13, 2010.[1]

[1] Certification dated October 21, 2020, attached to plaintiff's Compliance as Annex "A".

As stated in the Court's Resolution dated October 2, 2020, the date when the accused received the FAN is crucial to the determination of probable cause as prescription may have set in for the prosecution of the crimes charged. The Court took note of the following significant dates:

November 10, 2009 – Date of issuance of the FAN against the accused for taxable year 2006;

August 8, 2017 – Date of filing of the Joint-Complaint Affidavit with the Department of Justice (DOJ);

July 22, 2020 – Date when the two (2) Informations were filed against accused for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

Section 281 of the 1997 NIRC, as amended, provides:

> "SECTION 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.
>
> The term of prescription shall not run when the offender is absent from the Philippines." (Emphasis supplied)

The Supreme Court had the occasion to interpret the afore-quoted Section 281 (formerly Section 354 of the NIRC) in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines,*[2] by ruling that as long as the period of discovery and institution of judicial proceedings for its investigation and punishment up to the filing of the

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

information in court does not exceed five (5) years, the government's right to file an action will not prescribe, and we quote:

> "...As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem 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."**

Based on the two (2) Informations filed by the prosecution, the accused is charged with the willful failure to pay deficiency taxes despite prior assessments, including prior and post notices and formal demands to pay in violation of Section 255 of the 1997 NIRC, as amended, quoted as follows:

> Sec. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. xxx"

Applying the principle enunciated in the *Emilio Lim* case, the prescriptive period of five (5) years begins to run from the date of commission or "discovery" of the crime and is interrupted on the date when the revenue officers filed their Joint Complaint-Affidavit with the DOJ for preliminary investigation.

In the instant case, the crime of willful failure to pay deficiency taxes is deemed "discovered" on the date the FAN became final, executory and demandable[3] and this is the reason

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[3] Tupaz vs. Ulep, G.R. No. 127777, October 1, 1999 where the Supreme Court ruled thus:

why the Court in its Resolution dated October 2, 2020 directed plaintiff to present documentary proof to show the date of receipt of the FAN to determine when the same became final, executory and demandable by reason of the failure of the accused to timely file a protest in accordance with Section 228 of the 1997 NIRC, as amended, and we quote:

> "**SEC. 228.** *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision

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"We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*,[22] 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 taxpayers willful refusal to pay the taxes within the allotted period."** (emphasis supplied) or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (emphasis supplied)

Having no information as to the date of receipt of the FAN by the accused (although purportedly mailed on January 13, 2010) as manifested by the prosecution in its *Compliance,* coupled with the fact that more than five (5) years have elapsed from the *date of issuance* of the FAN (November 10, 2009) to the *actual date of filing* of the Joint Complaint Affidavit with the DOJ on August 8, 2017, the Court has no reasonable basis to definitely ascertain that the right to prosecute the accused for the crimes charged in the two (2) Informations have not yet prescribed.

A trial court judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.[4]

WHEREFORE, premises considered, the *Compliance* filed by plaintiff on October 22, 2020 is **NOTED.** However, considering plaintiff's failure to establish the date when the accused received the FAN dated November 10, 2009, Criminal Case Nos. O-830 and O-831 are hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Rule 112
Preliminary Investigation

[4] "Section 5. *When warrant of arrest may issue.* - a) By the Regional Trial Court. – xxx, the Judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause the judge may order the prosecutor to present additional evidence within five (5) days from notice xxx". (emphasis supplied)

CATHERINE T. MANAHAN
Associate Justice