REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

QNX SOLUTIONS, INCORPORATED, and its responsible corporate officers ANGELO R. BALILI (President), SANTIAGO T. PULIDO (Treasurer) and GERTRUDES S. TAMAYO (Corporate Secretary),
(Unit 1607, Herrera Tower, Valero Street, Salcedo Village, Makati City), (At-Large),
Accused.

CTA CRIM. CASE NO. O-989
For: Violation of Section 255 in relation to Sections 253 and 256 of R.A. No. 8424, as amended (Willful Failure to Pay Tax)

Members:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

APR 27 2023
3:12 p.m.

x - x

RESOLUTION

This addresses plaintiff's **Motion for Reconsideration (Re: Order dated 25 January 2023)** filed on February 21, 2023.

In the Resolution dated January 25, 2023, the Court dismissed the instant case on the ground of prescription.[1]

Consequently, plaintiff moves for reconsideration.

Plaintiff prays to set aside the aforesaid Court's Resolution and to uphold the Information filed on December 6, 2022 on the ground that the instant complaint filed by the Bureau of Internal Revenue (BIR) for failure to pay taxes in violation of Section 255 in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, has not yet prescribed.

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[1] Docket, pp. 68 to 72.

Plaintiff avers that in the assailed Resolution, the Court held the prescriptive period began to run on October 14, 2013, the date when the Formal Assessment Notice (FAN) became final and executory, and not on April 11, 2019, when the Joint-Complaint Affidavit was filed with the Department of Justice (DOJ). Plaintiff points out that the complaint filed against the accused is violation of Section 255 in relation to Sections 253 and 256 of the NIRC of 1997, as amended. Allegedly, the said violation will give rise to a case of tax evasion and is not limited to willful failure to pay taxes, which arises after investigation and issuance of assessment notice and formal letter of demand, but also failure to supply correct and accurate information and failure to make a return, among others, tantamount to filing a false or fraudulent return with intent to evade tax.

Plaintiff also claims that accused made substantial underdeclaration of taxable sales, receipts or income and overclaimed deductions for the taxable year 2010 as shown in the FAN dated September 9, 2013. Based on the FAN, accused QNX Solutions, Inc. (QSI) had gross receipts in the aggregate amount of ₱25,895,982.11; however, accused QSI only declared the amount of ₱8,854,293.99 in the VAT Returns as its taxable sales. As such, there is allegedly an underdeclaration in the total amount of ₱17,311,688.12 or 66.85% of the actual taxable sales. Plaintiff also claims that accused corporation made substantial overstatement of deductions in its income tax returns amounting to ₱17,963,951.46. With those substantial underdeclarations, there is purportedly a *prima facie* evidence of filing false or fraudulent returns against accused QSI. Plaintiff, thus, argues that the filing of false or fraudulent return implies that the act of accused was intentional and done with intent to evade the taxes due.

Plaintiff states that, contrary to the findings of this Court that the five-year prescriptive period started to run on October 14, 2013, said date actually refers to the point of discovery of filing false or fraudulent returns coupled by its willful refusal to pay the taxes within the prescribed period. According to plaintiff, the prescription of crimes under Section 281 of the NIRC of 1997, as amended, does not only speak of the point of discovery but also the institution of judicial proceedings for its investigation and punishment. Plaintiff insists that the date of discovery on October 14, 2013 together with the institution of judicial proceedings for preliminary investigation on April 11, 2019 with the DOJ indicates that the five-year prescriptive period began to run only on April 11, 2019.

Plaintiff further argues that, applying the ruling in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[2] to the instant case, the five-year prescriptive period from April

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

11, 2019 will not expire until April 11, 2024; thus, when the Information was filed before the Court on December 6, 2022, the five-year prescriptive period has yet to lapse.

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

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

In the assailed Resolution, the Court has applied the ruling made by the Supreme Court in the case of *Tupaz vs. Ulep*[3] (*Tupaz* case) to determine the day of the commission of the violation of the law and prescription of the criminal action, which led to the dismissal of the instant case. The said case cited *Lim, Sr. vs. Court of Appeals* (*Lim* case) which is instructive in interpreting Section 281 of the NIRC of 1997 with respect to the commencement of the prescriptive period.

In the *Lim* case, the Supreme Court discussed the date of commission of tax evasion in relation to the commencement of the five-year prescriptive period in criminal cases involving willful refusal to pay deficiency taxes and those involving the filing of fraudulent tax returns, *viz:*

> "Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that **by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers.** Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.

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[3] G.R. No. 127777, October 1, 1999.

We hold for the Government. Section 51 (b) of the Tax Code provides:

> (b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.* (Emphasis supplied)

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 *[sic]* refusal to pay the taxes due within the alloted *[sic]* 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.

With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' **filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law**, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of discovery of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. The Solicitor General tresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:

> 'Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*' (Emphasis supplied).

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

From the foregoing, the date of commission of the crime of tax evasion would depend on the mode of commission as alleged in the information charged. It now becomes imperative to first determine the mode of commission based on the allegations in the Information and its supporting documents to ascertain the commencement of the five-year prescriptive period.

Based on the allegations in the Information,[4] the act or omission complained of as constituting the offense allegedly committed is as follows:

> "That on or about 06 January 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, QNX Solutions, Incorporated, and Angelo R. Balili, Santiago T. Pulido and Gertrudes S. Tamayo, its president, treasurer and corporate secretary, respectively, and, therefore, it's responsible corporate officers, with Tax Identification No. 206-266-184-000, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay the company's income tax obligations for the year 2010, to wit: Five Million Six Hundred Seventeen Thousand Seventy Pesos and Thirty-Four Centavos (Php5,617,070.34), exclusive of surcharge and interest, under BIR Assessment Notice No. IT-ELA52039-10-13-0347, did then and there **willfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount** despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.
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> CONTRARY TO LAW." *(Emphasis supplied)*

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4 Docket, pp. 5 to 7.

Relative thereto, the allegations in the Joint Complaint-Affidavit and Referral Letter of the CIR dated April 11, 2019, and the DOJ Resolution dated February 7, 2020, insofar as the offense allegedly committed by the accused, provide:

> *Joint Complaint-Affidavit of Zenaida E. Reyes and Racquel A. Manalang dated April 11, 2019:*
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> "2. In our official capacities, we are initiating this criminal action against QNX SOLUTIONS, INC., and its responsible corporate officers, ANGELO R. BALILI, SANTIAGO T. PULIDO and GERTRUDES S. TAMAYO, in their capacities as President, Treasurer and Corporate Secretary, in that order, for their **WILLFUL FAILURE TO PAY TAX as defined and penalized under Section 255 in relation to Sections 253 and 256 of the NIRC of 1997**, xxx"[5] *(Emphasis supplied)*
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> *Referral Letter of the CIR dated April 11, 2019:*
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> "I have the honor to refer to you for preliminary investigation and filing of an information in court if evidence so warrants, the herein attached Joint Complaint-Affidavit, together with its Annexes, of Revenue Officers ZENAIDA E. REYES and RAQUEL A. MANALANG of the BIR-Revenue Region No. 8, c/o Legal Division, 2/F, BIR Bldg., 313 Sen. Gil Puyat Ave., Makati City, recommending the criminal prosecution of QNX SOLUTIONS, INC., and its responsible Corporate Officers, ANGELO R. BALILI, SANTIAGO T. PULIDO and GERTRUDES S. TAMAYO, in their capacities as President, Treasurer and Corporate Secretary, in that order, with last known address at Unit 1607 Herrera Tower cor. Valero St., Salcedo Village, Makati City, for their **Willful Failure to Pay Tax for taxable year 2006** *[sic]* **as prescribed under the NIRC of 1997, as amended in violation of Section 255, in relation to Sections 253 and 256, of the same Code** xxx"[6] *(Emphasis supplied)*
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> *DOJ Resolution dated February 7, 2020:*
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> "We resolve to find probable cause for the complaint for violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended. Based on the documents submitted, respondent QNX and its responsible corporate officers Angelo R. Balili, Santiago T. Pulido and Gertrudes S. Tamayo, **willfully failed to pay the correct internal revenue taxes and value-added tax, expanded withholding tax, final withholding tax, final withholding of value-added tax and documentary stamp tax for the taxable year 2010**. Their continued defiance of the assessment notices and demands of complainant BIR amply establishes their willful intent to pay their tax liabilities."[7] *(Emphasis supplied)*

Nowhere in the Information or the supporting documents did the BIR or the DOJ specifically allege that the accused filed false or fraudulent tax

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[5] Docket, p. 21
[6] Docket, p. 19
[7] Docket, p. 16

returns with intent to evade taxes. What is apparent is that the act complained of is the accused's willful failure to pay taxes.

Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides as follows:

> "Section 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the **acts or omissions constituting the offense**, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it."

Based on the above provision, acts or omissions constituting the offense must be stated in the information. In the instant case, the acts constituting the offense as stated in the information is that the accused *"willfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount [of deficiency taxes]"* and not that the accused failed to supply correct and accurate information tantamount to filing a false or fraudulent return with intent to evade tax.

It also bears to emphasize that fraud is a question of fact and the circumstances constituting fraud must be alleged and proved in the court.[8] Thus, in the absence of specific allegations of fraud, the crime charged remains to be for willful failure to pay taxes. Consequently, applying Section 281 of the NIRC of 1997, as interpreted in the *Lim* and *Tupaz* cases, the five-year prescriptive period shall commence to run after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.

Records show that the accused received the FAN on September 13, 2013, which then attained finality thirty (30) days thereafter, or on October 14, 2013, when the period to file a protest lapsed. The BIR then issued a Preliminary Collection Letter on December 17, 2013[9] and a Final Notice Before Seizure dated January 6, 2014 and received by the accused on January 29, 2014,[10] which indicates that the accused refused to pay its tax liability despite demands.

Counting from the finality of the assessment (i.e., October 14, 2013 – day after the lapse of the period to protest), coupled with the accused's willful refusal to pay the taxes within the allotted period despite demands (i.e., January 29, 2014 – accused's receipt of the latest demand in the form

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[8] *CIR v. Toledo Power Company*, C.T.A. EB Case No. 833, Resolution dated December 20, 2012 citing *CIR vs. Ayala Securities Corporation*, G.R. No. L-29485, March 31, 1976

[9] Docket, p. 64.

[10] Docket, p. 65.

of the Final Notice Before Seizure), the Referral Letter for preliminary investigation should have been filed before the DOJ within five (5) years from January 29, 2014, or until January 28, 2019. Thus, it is apparent that the five-year prescriptive period has already lapsed when the Referral Letter for preliminary investigation was filed before the DOJ on April 11, 2019 and when the instant Information was filed before this Court on December 6, 2022.

WHEREFORE, premises considered, plaintiff's **Motion for Reconsideration (Re: Order dated 25 January 2023)** is **DENIED** for lack of merit.

SO ORDERED.

(On leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice