REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

APOLINARIO MANUEL y BAILOR,
No. 180 Central Dulong Bayan, San Jose Del Monte, Bulacan
(At Large),
Accused.

CTA CRIM. CASE NO. O-1034
For: Violation of Section 255 of the National Internal Revenue Code, as amended

Members:
DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:
JUL 27 2023 ; 8:50AM

x - x

RESOLUTION

In the Resolution dated May 26, 2023, the Court ordered plaintiff to submit within five (5) days from notice the proof of receipt by the accused of the Preliminary Assessment Notice, Final Assessment Notice (FAN), and Formal Letter of Demand (FLD).

Records Verification dated July 3, 2023 disclosed that plaintiff failed to comply with the abovementioned Resolution.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines* ("*Lim*"),[1] the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the wilful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> "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**

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

> **willful refusal to pay the taxes due within the allotted 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." (*Boldfacing supplied*)

In the Complaint-Affidavit, it was alleged that the FAN and FLD were mailed to accused as shown in the Registry Return Notice with Billing Reg. No. 1116 attached as Annex "E" thereof. Under prevailing regulations at that time,[2] service of the FLD and ANs may be made through registered mail, and there is a disputable presumption that such assessment notices were received by the addressee in the regular course of the mail.[3] The Registry Return Notice (Annex "E") states that the FAN and FLD were delivered to the addressee on **November 30, 2010**.

Considering that accused received the alleged FAN and FLD on November 30, 2010, the case should be dismissed on the ground of prescription.

Section 281 of the National Internal Revenue Code (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.
>
> 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."

Since no protest was filed within thirty (30) days from November 30, 2010, the assessment became final and executory on **December 30, 2010**. Plaintiff had five (5) years from December 30, 2010, or until **December 30, 2015**, within which to **file the Information in court**.

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[2] Section 3.1.7, Revenue Regulations No. 12-99.
[3] *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

Here, the Complaint-Affidavit was executed and filed before the Office of the City Prosecutor on **July 21, 2015**, albeit the corresponding Information was actually filed only on **April 13, 2023**, or way beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended. As elucidated in *Lim*:

> "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 willful refusal to pay the taxes due within the allotted 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.**" (*Boldfacing supplied*)

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 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.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription**." (*Boldfacing supplied*)

Under the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the court. In this case, the Information was filed way beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

It must be noted that the Information was dated **September 4, 2015**, but the same was only filed in court on **April 4, 2023**. There exists nothing in the records that justifies the undue delay committed by plaintiff in instituting the present criminal case almost eight (8) years from the issuance of the Information. It is a legal principle that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted, which takes into account the nature of the law on prescription of crimes as an act of amnesty and liberality on the part of the state in favor of the offender.[4]

WHEREFORE, premises considered, CTA Crim. Case No. O-1034 is hereby **DISMISSED** by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

[4] *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.