REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NELSON VIOLAGO,
No. 2000 La Trinidad Subd.,
Lolomboy, Bocaue, Bulacan,
(At-Large),
Accused.

CTA CRIM. CASE NO. O-1030

Members:

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

Promulgated:
JUL 31 2023 9:55 a.m.

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RESOLUTION

Accused **NELSON VIOLAGO** is charged before the Court of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That on June 22, 2011 and thereafter, in Quezon City, and within the jurisdiction of the Honorable Court, accused, did then and there willfully and unlawfully fail, refuse, and neglect, as he still fails, refuses, and neglects to pay the principal deficiency income tax and value-added tax for taxable year 2007 in the amount of P2,101,491.67 and P422,238.12, respectively, or in the amount of TWO MILLION FIVE HUNDRED TWENTY-THREE THOUSAND SEVEN HUNDRED TWENTY-NINE PESOS and 79/100 (Php2,523,729.79) exclusive of penalties, surcharges and interests, under Assessment Notices/Formal Letter of Demand No. 31180, despite notice and service of said assessment, without formally protesting against or appealing the same, and repeated demands made to him, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.

CONTRARY TO LAW.
Quezon City, MM.
August 11, 2021."

On June 16, 2023, the Court issued a Resolution ordering the plaintiff to submit to the Court, within five (5) days from notice, the original or certified true copy of the Referral Letter/Complaint and the Affidavits of Atty. Napoleon P. Campos, Jr. and Corazon L. Cruz, all dated November 23, 2011.

On July 4, 2023, OIC-City Prosecutor Ma. Aileen D. Guno submitted the certified xerox copies of the Referral Letter/Complaint, Affidavits of Atty. Napoleon P. Campos, Jr. and Corazon L. Cruz, all dated November 23, 2011, Registry Return Notice, Assessment Notices, Formal Letter of Demand, Warrant of Distraint and/or Levy, Preliminary Collection Letter, Final Notice Before Seizure and Final Notice Before Filing Criminal Complaint, in compliance with the Court's Resolution.

In the light of the foregoing, the compliance of the state prosecutor is **NOTED**.

The Court is now tasked to evaluate the Information and the supporting documents/evidence filed by the State Prosecutor to determine if there is probable cause to go on with the prosecution of the case.

Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused.[1] Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[2] And once the Information is filed, the determination of the presence or absence of probable cause for the issuance of a warrant of arrest against the accused, or for the withdrawal of the Information, or for the dismissal of the case, is addressed to the sound discretion of the Court.[3]

The Information in this case was filed on April 13, 2023.

Section 281 of the NIRC of 1997, 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.

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[1] Allado vs Diokno, May 5, 1994, 232 SCRA 192
[2] Baltazar vs People, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293-294
[3] Sarigumba, et al. vs. Sandiganbayan, 451 SCRA 533

> Prescription shall begin to run from the day the commission of the violation of the law, and if the same be now 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 commencement of the prescriptive period as provided in the above-cited provision (priorly Section 354 of the Old Tax Code) was interpreted by no less than the Supreme Court in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[4] *(Lim Case)* in the following manner, to wit:

> "Relative to Criminal Case 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.
>
> 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 deficiency in tax so discovered shall be paid upon notice and demand form the Commissioner of Internal Revenue.*'
>
> 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

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

> 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."

Based on the foregoing, the date of commission of the violation is a significant event in the prosecution of any violation of the Tax Code. <u>It was observed that as long as the period from the day of the commission of the violation up to the filing of the Information in Court does not exceed 5 years, the government's right to file a criminal action does not prescribe</u>. Conversely, if the period from the commission up to the filing of the information in court exceeds 5 years, then the government's right to file an action has prescribed.

A perusal of the record shows that Assessment Notices and Formal Letter of Demand (FLD) were issued on July 15, 2010, sent through registered mail, and received by accused on August 3, 2010.

Hence, accused's failure to pay the deficiency Value-Added Tax (VAT) and Income Tax for taxable year 2007 was allegedly committed on September 2, 2010, and prescription began to run on the same date. Counting the five (5)-year prescriptive period from September 2, 2010, the offense/s prescribed on September 2, 2015.

Plaintiff instituted the criminal complaint against accused by filing the Affidavits of Atty. Napoleon P. Campos, Jr. and Corazon L. Cruz, and the Referral Complaint with the Department of Justice (DOJ) on November 23, 2011. On August 11, 2021, Assistant City Prosecutor Rio Nila L. Abiang-Diwas issued a Resolution finding probable cause to indict accused for alleged violation of Section 255 of the NIRC of 1997, as amended.

The Assessment Notices and FLD were received on August 3, 2010. Accused failed to pay the assessed taxes indicated in the Assessment Notices and FLD within 30 days from receipt thereof. Under Revenue Memorandum Circular (RMC) No. 101-90, "the offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period." <u>Since, accused failed to pay on September 2, 2010, the last day to pay the assessed taxes, such date is considered the day of the commission of the violation</u>. Applying the law and the *Lim case,* the 5-year prescriptive period will lapse on September 2, 2015.

Considering that the case was filed more than twelve years late, the right of the government to institute the subject case against accused has already prescribed when the Information was filed before this Court on April 13, 2023.

WHEREFORE, premises considered, the instant case is **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice