REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-958** For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended
-versus-	*Members:*
FAREAL BUILDERS, INC., and its responsible officers, FERDINAND I. SANTOS and LILIBETH M. SANTOS, *Accused.*	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* Promulgated: SEP 29 2023, 9:00AM

x- x

RESOLUTION

For resolution is plaintiff's *Motion for Reconsideration* filed on July 19, 2023, with the accused's *Comment/Opposition (To Plaintiff's Motion for Reconsideration)* filed *via* registered mail on July 27, 2023, and received by the Court on August 1, 2023.

In its motion, plaintiff argues that the Information was timely filed on December 1, 2022, based on Section 205 (b) in relation to Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended. Considering that the Warrant of Distraint and/or Levy (WDL) was received by the accused's representative, Paola Bianca B. Garcia, on May 22, 2013, and the accused has no record of real properties based on a letter dated February 6, 2014, issued by the City Assessor of Quezon City, the running of the statute of limitations under Section 223 of the NIRC of 1997, as amended, was tolled.

On the other hand, the accused contends that Section 223 of the NIRC of 1997, as amended, refers to the running of the statute of limitations provided under Sections 203 and 222 thereof and is inapplicable in a criminal case. Instead, the proper provision governing the prescription of offenses is

Section 281 of the NIRC of 1997, as amended. Considering that the Information was filed more than the five-year reglementary period under Section 281 of the NIRC of 1997, as amended, the accused's right to dismiss this case cannot be defeated.

At the outset, plaintiff puts forth the same argument, which was already considered and passed upon by the Court in its Resolution dated June 21, 2023. In quashing the Information, the Court explained that the statute of limitations under Section 223[1] of the NIRC of 1997, as amended, is inapplicable in a criminal case where the prescriptive period for the offense is governed by Section 281[2] thereof, *viz.*:

> Plaintiff argues that Section 223 of the NIRC of 1997, as amended, suspended the running of the statute of limitations in a proceeding in court for collection of deficiency taxes when the WDL is duly served upon the taxpayer, and no property could be located.
>
> Plaintiff misconstrued Section 223 as applicable in this case when the provision only pertains to instances where the internal revenue taxes may be assessed or collected after the ordinary prescriptive period.
>
> This is not a regular or ordinary collection case but a criminal case where the prescriptive period for the violation of any provision of the NIRC of 1997, as amended, is governed by Section 281[.] ...
>
> ... .
>
> Applying *Lim* and *Tupaz*, the cause of action accrued after the BIR served the notice and demand to pay, *i.e.*, FAN and FLD, to the accused on October 25, 2012. Even with the demand to pay, the accused still refused to pay their

---

[1] SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

[2] 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. ... (*Emphasis supplied*)

> deficiency taxes within the allotted period, as stated in the FAN and FLD. Nor did the accused file their protest within 30 days from receipt of the assessment. Hence, the assessment attained finality on *November 24, 2012.*
>
> ... .
>
> From the alleged "commission" of the offense involving a violation of the NIRC on *November 24, 2012,* and the filing of the Joint Complaint-Affidavit on *April 12, 2018,* up to the filing of the *Information* on *December 1, 2022,* more than *ten (10) years* have elapsed.
>
> Being over five (5) years late, the right of the government to institute the instant case against the accused had already prescribed when the *Information* was filed with this Court on December 1, 2022.

The Court finds no convincing reason to reverse the quashal of the Information. As it stands, the filing of the Information in Court on December 1, 2022 was made beyond the five (5)-year prescriptive period as provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice