20-000027-0011

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-807

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

RONIE ROMANO EUSTAQUIO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROS. ROBERT D.G. ONG, JR.
Department of Justice
Padre Faura Street, Ermita
1000 Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Sta. Rosa City Police Station
Brgy. Tagapo, Sta. Rosa City
Laguna

GREETINGS:

You are hereby notified by these presents that on **April 30, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 2, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RONIE ROMANO EUSTAQUIO,
Accused.

CTA Crim. Case No. **O-807**

For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended

Members:

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

Promulgated:
APR 30 2024; 1:30PM

x - x

RESOLUTION

On 28 January 2020, the plaintiff filed an Information[1] against herein accused **RONIE ROMANO EUSTAQUIO** (**accused/Eustaquio**), for violation of Section 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, allegedly committed as follows:

> ...
>
> That [on] September 2, 2010 and thereafter, in the City of Manila[,] and within the jurisdiction of this Honorable Court, accused **RONIE ROMANO EUSTAQUIO**, a registered taxpayer of BIR Revenue District Office No. 57-West Laguna, Biñan City, with Tax Identification Number 219-620-759-000, with obligation under the law to file and pay the corresponding Income Tax for taxable year/period 01 January to 31 December 2006, did then and there, willfully and knowingly fail to pay the correct Income Tax with the Bureau of Internal Revenue for said taxable year in the amount of TWENTY-THREE MILLION NINE HUNDRED TWELVE

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1 Division Docket, pp. 5-6.

2 **SEC. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. — ...*

THOUSAND ONE HUNDRED SIXTY[-]FIVE PESOS AND FIFTEEN CENTAVOS (Php23,912,165.15), exclusive of surcharges and interest, despite final assessment notice, including prior and post notices and formal demands to pay the last being in the nature of final notice for the accused to pay the said tax, to the damage and prejudice of the Government.

CONTRARY TO LAW.

. . .

The plaintiff attached the following supporting documents to the Information:

1) Certified True Copy of the Resolution dated 30 June 2019, signed by Assistant State Prosecutor (**ASP**) Roberto D.G. Ong, Jr., with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;[3]

2) Certified True Copy of the National Prosecution Service Investigation Data Form dated 11 April 2019;[4]

3) Certified True Copy of the Referral Letter dated 04 April 2019 of the Bureau of Internal Revenue (**BIR**) Commissioner Caesar R. Dulay, addressed to Secretary of Justice Menardo I. Guevarra[5]; and,

4) Certified True Copy of the Joint Complaint-Affidavit of Revenue Officers (**ROs**) Jimmy Belen, Jr. (**Belen**), Joseph Galicia (**Galicia**), Herbert M. Ordiz (**Ordiz**), Ryan D. Florendo (**Florendo**) and Nimrod John M. Dequito (**Dequito**), with attached Annexes "A" to "I", inclusive of sub-markings.[6]

In a Resolution dated 11 February 2020[7], the Second Division found probable cause and ordered the issuance of a Warrant of Arrest[8] against accused Eustaquio. It also fixed the bail bond for his provisional liberty in the amount of ₱60,000.00.

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3 Division Docket, pp. 7-12.
4 Id., p. 17.
5 Id., pp. 18-19.
6 Id., pp. 20-61.
7 Id., pp. 63-64.
8 Id., p. 65.

As accused Eustaquio was not apprehended after the lapse of more than ten (10) months, the Second Division issued an Alias Warrant of Arrest on 06 January 2021.[9] Even after a considerable period, accused remained at large. Hence, the instant case was archived, subject to revival upon the arrest of accused.[10]

In the meantime, following the reorganization of the different divisions of the Court, the case was transferred to the First Division.[11] In an effort to speedily dispose the cases and to de-clog court dockets, an inventory of the archived cases was made thereafter.

As a result and upon a second hard look and evaluation of the allegations in the Information[12] and the supporting documents[13] submitted, this Court finds that the right to institute the criminal action has indeed already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: (**1**) the period of prescription for the offense charged; (**2**) the time the period of prescription starts to run; and, (**3**) the time the prescriptive period was interrupted.[14]

Relevantly, Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, 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.

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9 See Resolution dated 04 January 2021, id., p. 68; Alias Warrant of Arrest, id., p. 69.
10 See Resolution dated 10 November 2021, id., p. 80.
11 See Notice dated 29 May 2023.
12 Supra at note 1.
13 Supra at note 6.
14 *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, et al.*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division), et al.*, G.R. No. 109376, 20 January 2000.

> The term of prescription shall not run when the offender is absent from the Philippines.[15]
>
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) years. Relative thereto, the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[16] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[17] (**Emilio E. Lim, Sr.**), the Supreme Court explained that in criminal cases involving refusal to pay, the commission of the offense will only happen after the taxpayer was notified of his or her obligation to pay and the latter refused to do so, *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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15 Emphasis supplied and italics in the original text.

16 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

17 G.R. Nos. L-48134-37, 18 October 1990; Emphasis supplied and italics in the original text.

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 [I]nternal 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.*"

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 allot[t]ed 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.

. . .

Following the pronouncement in *Emilio E. Lim, Sr.*, the BIR issued Revenue Memorandum Circular (**RMC**) No. 101-90[18] reiterating the above:

. . .

1. *When cause of action for willful failure to pay deficiency tax occurs.*

The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.

2. *Prescription under Section 280 of the Tax Code.*

a) The 5-year prescriptive period in an offense or willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.

b) [A] protested assessment, the 5-year period starts from the service of the final notice and demand disposing of the protest, and not from the date of the original assessment.[19]

. . .

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18 Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.

19 Underscoring supplied and italics in the original text.

The above-mentioned principle was affirmed in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, et al.*[20] (**Tupaz**), where the Supreme Court explained that failure to pay deficiency tax may only be committed when, after the finality of the assessment, taxpayer refused to pay the taxes within the allotted period, and/or protest or question the assessment within thirty (**30**) days from receipt therefrom. The relevant portions state:

> ...
>
> 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*, 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 taxpayer's willful refusal to pay the taxes within the allotted period. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984**. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period.[21]
>
> ...

In this case, the records show that accused received on 07 April 2010[22] the Formal Letter of Demand[23] (**FLD**) with attached Details of Discrepancies[24], together with the Assessment Notices[25] (**ANs**) all dated 25 March 2010. The ANs indicated that the deficiency taxes should be paid on or before 26 April 2010.

Applying the ruling in *Emilio E. Lim, Sr.* and RMC No. 101-90, upon receipt of the FLD and ANs, the offense will be committed only after accused fails to pay the taxes due on 26 April 2010, or the due

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20 G.R. No. 127777, 01 October 1999.
21 Citations omitted, emphasis supplied and italics in the original text.
22 Registry Return Card marked as Annex "C-3", id., p. 36.
23 Annex "C", Division Docket, pp. 31-32.
24 Id., p. 33.
25 Annexes "C-1" to "C-2"., id., pp. 34-35.

date for the payment. Hence, the prescriptive period commences to run on **27 April 2010**, or the day after accused willfully refused to pay the taxes despite due notice. Counting five (5) years therefrom, plaintiff had until **27 April 2015** within which to file the subject Information with the Court. Notably, the said Information was filed with this Court only on **28 January 2020**. As such, the plaintiff's right to file the subject criminal action has already prescribed.

Even if We are to apply *Tupaz* and count the prescriptive period from the lapse of the 30-day period to protest or question the assessment, the subject criminal action would still have prescribed. To elaborate, accused received the FLD on 07 April 2010, thus counting 30 days from receipt thereof, he had until **07 May 2010** to file his protest or question the assessment. As accused failed to file the protest, the FLD became final and unappealable on **08 May 2010**. Counting five (5) years therefrom, plaintiff had until **08 May 2015** to file the subject Information. However, as already noted above, the said Information was filed with this Court only on **28 January 2020**, thus the criminal offense has clearly prescribed.

In sum, the right of the government to institute the case against accused RONIE ROMAN EUSTAQUIO had already clearly prescribed when the Information was filed, perforce justifying the dismissal of the present case.

It is settled that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[26] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, CTA Criminal Case No. O-807 is hereby **RETRIEVED** from the archives and accordingly **DISMISSED** on the ground of prescription.

The Alias Warrant of Arrest issued against the accused is **RECALLED** and **SET ASIDE**.

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[26] *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino, et al.*, G.R. No. L-28841, 24 June 1983.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice