

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **CTA CRIM. CASE NOS. O-673**
Plaintiff, For: Violation of Section 255 of the
National Internal Revenue
Code of 1997, as amended
- versus -

DIEGO G. MARTINEZ,
-AT LARGE-
(Twinpeaks Shell Service Center,
No. 184 Katipunan Road, Blueridge,
Quezon City
- OR -
Twinpeaks Shell Service Center I &
II, Marcos Highway, Santolan, Pasig
City),

Members:

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

Promulgated:

Accused.

JAN 0 8 2019

9:05 a.m.

x-----x

RESOLUTION

To recall, on April 6, 2018, the prosecution filed the *Information* dated July 26, 2017¹ against herein accused **DIEGO G. MARTINEZ**, for violation of Section 255, of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay deficiency value-added tax for taxable year (TY) 2006 despite several notices and demands.

Thereafter, a Warrant of Arrest was issued against the accused on May 16, 2018.²

The Court, in the Resolution dated June 7, 2018,³ ordered the issuance of Alias Warrant of Arrest⁴ against the accused.

Subsequently, or on January 28, 2019, the case was archived, without prejudice to its revival immediately upon accused's apprehension.⁵

¹ Docket, pp. 6 to 7.

² *Id.* at 64.

³ Docket.

⁴ Issued on June 28, 2018, *Id.*

⁵ Docket.

Upon a careful evaluation of the records, as will be discussed below, this Court finds that the government's right to institute the criminal action has 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.⁶

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.

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. (*Emphasis supplied*)

Based on the foregoing provision, the period of prescription for the offenses charged under the NIRC of 1997, as amended, is five (5) years. Prescription begins to run (1) from the day of the commission of the violation of the law; and, (2) if the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment. In both instances, the period is interrupted when judicial proceedings are instituted against the guilty persons.⁷

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*⁸ (Lim case), which provides that, for purposes of the commencement of the prescriptive period in relation to the charge of refusal to pay deficiency taxes due, said violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.

⁶ *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan*.

⁷ *People of the Philippines vs. Wintelecom, Inc./Hua C. Uychiyong (Treasurer)*, CTA EB Crim. No. 090, June 21, 2023.

⁸ G.R. Nos. L-48134-37, October 18, 1990.

In addition, in *Tupaz vs. Ulep*⁹ (*Tupaz case*), the Supreme Court, citing the *Lim* case, held that the offense of **failure to pay deficiency taxes is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period.** We quote:

Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. 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. (*Emphasis supplied*)

In the present case, the *Formal Letter of Demand* (FLD) and Assessment Notices were sent through registered mail on November 26, 2009.¹⁰ There was no indication, however, as to when the FLD and Assessment Notices were actually received by accused Martinez. Neither was date of the receipt of the FLD mentioned in the *Joint Complaint Affidavit* of Clea Marie P. Pimentel, Angelina T. Victorio and Roel A. Zafra, nor was it indicated in the attached certified true copy of the FLD and Assessment Notices.

Considering that plaintiff failed to indicate the date of actual receipt of the FLD by accused Martinez, the Court is constrained to consider the date of service on the date of issuance and the due date indicated therein, i.e. November 26, 2009. Thus, counting from the alleged date of the commission of the crime on December 26, 2009, which is 30 days after the FLD and Assessment Notices were sent through registered mail, the *Information* should have been filed before this Court within five years from December 26, 2009, or until December 26, 2014. Clearly, when the *Information* was filed before this Court on **April 6, 2018**, more than three years have passed since the government's right to institute a criminal action prescribed.

⁹ G.R. No. 127777, October 1, 1999.

¹⁰ Par. 15 of the *Complaint-Affidavit*, Docket p. 28; Annex J of the *Joint Complaint Affidavit*, Docket, p. 50.

WHEREFORE, premises considered, CTA Criminal Case No. O-673 is hereby **RETRIEVED** from the archives and, accordingly, **DISMISSED** on the ground of prescription.

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

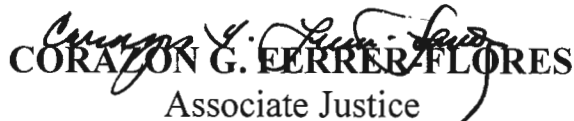
SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On leave

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice