REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-1033** (IS No. XV-02-INV-13C-01323) For: Vio. Of Section 255, in relation to Sec. 253(d) and 256, NIRC
-versus-	
REYNALDO NAVAL, in his capacity as President of NAVMARINE TECH, INC. 1) 633 M. Naval St. corner C-4 Navotas City; 2) Dr. C. Bausa St. Bagumbayan North, Navotas City; 3) No. 1 Carnation St. Merville Subd., Tanza, Navotas City, (AT-LARGE) *Accused.*	**Members:** **MANAHAN,** ***Chairperson,*** **REYES-FAJARDO,** **ANGELES, *JJ.*** Promulgated: APR 19 2024 9:12 a.m.

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RESOLUTION

On September 11, 2023, the instant case was dismissed for failure of the prosecution to comply with Resolution of the Court.

On February 19, 2024, the prosecution filed an *Ex Parte* Omnibus Motion – Motion for Reconsideration and Motion to Admit Attached Document submitting the following:

1. Amended Information;
2. Certified True Copy of the Investigation Data Form;
3. Certified True Copy of the Letter Referral dated March 15, 2013;
4. Certified True Copy of the Complaint-Affidavit; and
5. Certified True Copy of the General Information Sheet of Navmarine Tech, Inc. for the year 2007.

Finding merit, the Court grants the prosecution's *Ex Parte* Omnibus Motion. However, after evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

The accusatory portion of the Amended Information states:

> The undersigned Assistant City Prosecutor accuses REYNALDO NAVAL of violation of Sec. 255 in relation to Sec. 253 (d) & 256, National Internal Revenue Code (NIRC) of 1997, committed as follows:
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> That sometime in the year 2011, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, in his capacity as President of NAVMARINE TECH, INC., did then and there willfully, unlawfully and feloniously, fail to pay the following taxes, to wit:
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> | | |
> |---|---|
> | Basic Deficiency Income Tax | - P7,671,743.26 |
> | Basic Value Added Tax | - 2,619,626.68 |
> | Expanded Withholding Tax | - 438,385.33 |
> | Improperly Accumulated Earnings Tax | - 132,899.76 |
>
> with an aggregate total of P10,862,556.03, more or less, exclusive of interests, surcharges, and penalties, for the taxable year 2007, arising from a final, demandable, and executory Assessment Notice/Formal Letter of Demand dated December 13, 2010, to the prejudice of the government in the aforementioned amounts.
>
> CONTRARY TO LAW.
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> Caloocan City, MM, February 12, 2024.

In support thereof, the following documents were attached to said Information:

1. Resolution dated August 12, 2015 issued by Assistant State Prosecutor Ma. Victoria Luz A. Villarojo, recommending that Reynaldo Naval be charged for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended;

2. Letter dated March 15, 2013 of Regional Director Gerardo R. Florendo to the Secretary of the Department of Justice (DOJ) stating

the authority and approval for the filing and institution of criminal complaint against accused; and

3. Complaint Affidavit (CA) of Atty. Rommel T. Tolentino dated March 26, 2013 and filed with the DOJ on even date, with the following attachments:

a. Letter of Authority dated December 18, 2008;[1]
b. First Request for Presentation of Records dated December 22, 2008;[2]
c. Second Request for Presentation of Records;[3]
d. Final Notice dated April 16, 2009;[4]
e. Recommendation for Issuance of Subpoena Duces Tecum March 20, 2009;[5]
f. Summons and/or Subpoena Duces Tecum;[6]
g. Preliminary Assessment Notice dated November 9, 2010;[7]
h. Registry Return Notice;[8]
i. Assessment Notice dated December 13, 2010;[9]
j. Assessment Notice dated December 18, 2010;[10]
k. Assessment Notice dated December 18, 2010;[11]
l. Assessment Notice dated December 13, 2010;[12]
m. Formal Letter of Demand dated December 13, 2010;[13]
n. Formal Letter of Demand dated December 13, 2010;[14]
o. Registry Return Notice;[15]
p. Preliminary Collection Letter dated February 25, 2011;[16] and
q. Final Notice Before Filing Criminal Complaint.[17]

OUR RULING

This case merits outright dismissal.

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1 Annex "A," CA.
2 Annex "B," CA.
3 Annex "C," CA.
4 Annexes "D," CA.
5 Annex "E," CA.
6 Annex "F," CA.
7 Annex "G," CA.
8 Annex "H," CA.
9 Annex "I," CA.
10 Annex "I-1," CA.
11 Annex "I-2," CA.
12 Annex "I-3," CA.
13 Annex "I-4 to I-5," CA.
14 Annex "I-6," CA
15 Annex "J" CA.
16 Annex "K," CA.
17 Annex "L," CA.

Section 2, Article III of the 1987 Constitution espouses the inviolability of the people's right to be secured against unreasonable seizures on their persons, among others. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[18]

Jurisprudence[19] holds that the offense of willful failure to pay tax is committed after service of notice and demand for payment of deficiency taxes upon the taxpayer.

> **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.
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> 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.
>
> ....

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[20]

Anent the *first* consideration, the prescriptive period for tax offenses punishable under the NIRC, as amended is five (5) years.

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18 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

19 *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, et al.*, G.R. No. 127777 October 1, 1999.

20 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, G.R. No. 135715, April 13, 2011.

For the *second* consideration, prescription shall commence from: 1) commission of the tax offense, if known at that time; *or* 2) from discovery of such tax offense and institution of judicial proceedings for its investigation and punishment.

The *third* consideration, *i.e.*, interruption of prescriptive period, is dependent on whether the prescriptive period commenced from commission of the tax offense, or from discovery thereof and institution of judicial proceedings for its investigation and punishment. To expound:

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals*[21] case, accused therein were charged for their refusal to pay deficiency income tax (IT) due for taxable years (TY) 1958 and 1959, among others. One of the arguments they advanced is that the criminal actions instituted against them have prescribed. In holding said argument erroneous, the Supreme Court ruled:

> ...
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> 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 wilful refusal to pay the taxes due within the alloted 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.**
>
> ...[22]

Then came the *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, et al.*[23] case. There, accused was charged as an officer of El Oro Engravers Corporation for willful failure to pay corporate IT for TY 1979. Among the defenses she posed is that said offense had prescribed. The Supreme Court ruled in the negative, ratiocinating in this wise:

> .... Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim,*

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21 G.R. Nos. L-48134-37, October 18, 1990.
22 Boldfacing supplied.
23 G.R. No. 127777, October 1, 1999.

> *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.**
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> . . .[24]

Indeed, the *Lim* case and the *Tupaz* case were in unison in holding that the offense of willful failure to pay tax is *committed* upon finality of the assessment, coupled with the taxpayer's deliberate refusal to pay taxes due. However, these cases differ as to when interruption of the five (5)-year prescriptive period under Section 281 of the NIRC, as amended occurs. In the *Lim* case, the prescriptive period was interrupted by the filing of Information in court, whereas in the *Tupaz* case, said prescriptive period was interrupted by the filing of the Complaint before the DOJ for preliminary investigation.

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA). Section 2, Rule 9 of the RRCTA provides that the institution of the criminal action shall interrupt the running of the period of prescription, to wit:

> **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

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24 Citations omitted. Boldfacing supplied.

> by the Bureau of Customs, the Commissioner of Customs must approve their filing. (Rules of Court, Rule 110, sec. 2a; n)
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> **The institution of the criminal action shall interrupt the running of the period of prescription.** (Rules of Court, Rule 110, sec. 1, par. 2a) (Boldfacing supplied.

The RRCTA being the special provision that governs the proceedings before this Court provides that the period of prescription for a tax case shall be tolled by the filing of an Information with this Court.

As claimed by the BIR in its Complaint Affidavit, the Assessment Notices and Formal Letter of Demand (FLD) dated December 13, 2010 covering the taxable year 2007 were served to and received by accused on December 23, 2010. There being no administrative protest filed within thirty (30) days from receipt thereof, said assessment attained finality on January 23, 2011. *Sans* payment thereof by accused, the tax offenses, in these cases, were *committed* on January 23, 2011.

Counting from January 23, 2011, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on November January 23, 2016. Thus, the right of the government to institute the cases against accused had already prescribed when the Information was filed before this Court on April 13, 2023.

The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present cases dismissible on the ground of prescription.

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription of the offenses charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case O-1033 is **DISMISSED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice