

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case Nos. O-800
& O-801

Members:

- versus -

DEL ROSARIO, PJ, *Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JL.*

WINTELECOM, INC./HUA C.
UYCHİYONG (Treasurer),
Winhaus Bldg., 2366 Leon Guinto Promulgated:
St., Malate Manila,

Accused.

FEB 22 2022 1:05 pm

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RESOLUTION

In the Resolution dated July 23, 2021, the Court dismissed CTA Crim. Case Nos. O-800 and O-801 in this wise:

WHEREFORE, accused's *Urgent Motion to Quash* is **GRANTED**. Accordingly, the Informations docketed as CTA Crim. Case Nos. O-800 and O-801 are **DISMISSED**.

SO ORDERED.

In the plaintiff's Motion for Reconsideration (Re: Resolution dated July 23, 2021) dated October 25, 2021, it argues that the tax offenses charged under the two (2) Information in CTA Crim. Case Nos. O-800 and O-801 were not barred by prescription. It explains that the filing of the complaint before the Department of Justice (DOJ) tolls the running of the prescriptive period for offenses punishable by special laws pursuant to the Supreme Court ruling in *People v. Lee, Jr.*¹

¹ G.R. No. 234618, September 16, 2019.

According to the plaintiff, the Final Assessment Notice (FAN) issued on May 3, 2011 became final and appealable on June 2, 2011. Counting five (5) years from June 2, 2011, it had until June 2, 2016 to institute the proceedings against the persons guilty for violation of willful failure to pay tax. Since the complaint was filed before the DOJ on April 30, 2015, or allegedly within the five (5)-year prescriptive period under Section 281 of the NIRC, the tax offenses charged under the Information in CTA Crim Case Nos. O-800 and O-801 are not barred by prescription.

In his Comment posted on November 8, 2021, accused Hua C. Uychiyong counters that the argument advanced by the plaintiff was squarely addressed and passed upon by the Court in the Resolution dated July 23, 2021. Specifically, the filing of Information in court must fall within the five (5)-year prescriptive period under Section 281 of the NIRC.

For him, the FAN was received by accused Wintelecom, Inc. on May 6, 2011, giving the latter a period of thirty (30) days to pay the assessed taxes. As no payment was made within the period granted, the five (5)-year prescriptive period commenced on June 5, 2011; thus, the plaintiff had until June 5, 2016 to file the Information in Court. Therefore, the Information in CTA Crim. Case Nos. O-800 and O-801 both filed on November 8, 2019 is barred by prescription under Section 281 of the NIRC.

THE RULING OF THE COURT

The Plaintiff's Motion for Reconsideration is denied.

Section 281 of the NIRC, 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.

....

Beginning with *People v. Tierra*,² followed by *People v. Lim, Sr.*,³ and as applied by the Court in several cases,⁴ it has been consistently held that for offenses punishable under the NIRC, the filing of the complaint before the DOJ alone does not toll the running of the five (5)-year prescriptive period in Section 281 of the NIRC, as amended. In addition, the filing of the information in court must also fall within such five (5)-year prescriptive period. Simply put, the filing of the complaint before the DOJ *and* information in court must not exceed the five (5)-year prescriptive period under Section 281 of the NIRC as amended, lest the plaintiff be precluded from prosecuting the tax offense on the ground of prescription.

As discussed in the assailed Resolution, the accused were charged for two (2) counts of willful failure to pay tax punishable under Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended. Willful failure to pay tax is committed upon receipt of the final notice and demand, coupled with the taxpayer's refusal to pay the tax within the period prescribed. The FAN was received by accused Wintelecom, Inc. on May 6, 2011 giving the latter thirty (30) days, or until June 5, 2011 to pay the taxes assessed therein, but it failed. Hence, the five (5)-year prescriptive period commenced on June 5, 2011. Counting five (5) years from June 5, 2011, the plaintiff had until June 5, 2016 to file the complaint before the DOJ *and* the Information in court. While the complaint before the DOJ was timely filed on April 30, 2015, the respective Information in CTA Crim. Case Nos. O-800 and O-801 were both belatedly filed on November 8, 2019. This bars the plaintiff from prosecuting the accused on the tax offenses charged under the respective Information in CTA Crim. Case Nos. O-800 and O-801.

There is no merit in the plaintiff's argument that the filing of the complaint before the DOJ suspends the running of the

² G.R. No. L-17177-80, December 28, 1964. The case shall be referred as *Tierra* for brevity.

³ G.R. Nos. L-48134-37, October 18, 1990.

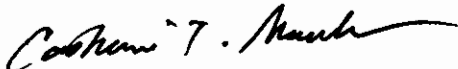
⁴ *People v. Bernardo*, CTA EB Crim. No. 078, September 29, 2021; *People v. Bernardo*, CTA EB Crim. No. 079, July 7, 2021; *People v. Consebido*, CTA EB Crim. No. 076, January 27, 2021; and *People v. Castillo*, CTA EB Crim. No. 053, July 8, 2020.

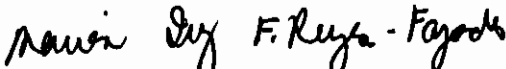
prescriptive period under Section 281 of the NIRC, as amended. The principle invoked by the plaintiff in *Lee, Jr.*,⁵ whereby the filing of the complaint before the DOJ suspends the running of the prescriptive period may not be applied in these cases because it refers to the *suspension of the prescriptive period for offenses covered by Republic Act No. 3326*.⁶ In contrast, the pronouncements in *Tierra*⁷ and *Lim, Sr.*⁸ used in deciding these cases specifically address the *suspension of prescriptive period covering offenses punishable under the NIRC* under Section 354 (now 281) of the NIRC, as amended. For this reason, the rulings of the Supreme Court in *Tierra* and *Lim, Sr.* are the doctrinal principles which are obtaining in these cases.

WHEREFORE, the plaintiff's Motion for Reconsideration (Resolution dated July 23, 2021) dated October 25, 2021 is **DENIED**.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


CATHERINE T. MANAHAN
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

⁵ *Supra*, at note 1.

⁶ *An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin*

⁷ *Supra*, at note 2.

⁸ *Supra*, at note 3.