



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

FIRST DIVISION

CTA CRIM. CASE NO. O-538

**PEOPLE OF THE PHILIPPINES ,
Plaintiff,**

- versus -

NOTICE OF RESOLUTION

**YOSHIMOTO POLE
CONSTRUCTION PHILS., INC.,
represented by Mercedes L. Bajao,
Accused.**

To:

**PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROSEC. CHRISTINE T. PEROLINO**
Department of Justice
Padre Faura St., Ermita, Manila

**ATTY. LORNA SB. CRUZ
ATTY. ALVIN N. STO. DOMINGO**
Bureau of Internal Revenue - Revenue Region No. 7
5th Floor, Fishermall (Roofdeck)
Quezon Avenue corner Fernando Poe Jr., Avenue
Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

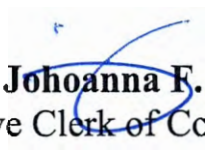
PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGeneral Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT & SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman
Quezon City

GREETINGS:

You are hereby notified by these presents that on **August 15, 2024**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 16, 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,

CTA Crim. Case No. **O-538**

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

- versus -

Members:

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

**YOSHIMOTO POLE
CONSTRUCTION PHILS., INC.**,
represented by **MERCEDES L.
BAJAO**,

Accused.

Promulgated:

AUG 15 2024 1:30PM

X ----- X

RESOLUTION

On 19 October 2015, the plaintiff filed an Information¹ against herein accused **YOSHIMOTO POLE CONSTRUCTION PHILS., INC.** represented by **MERCEDES L. BAJAO** (collectively "**accused**"/**YPCPI** and **Bajao**), for violation of Section 255² of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The accusatory portion of which reads:

¹ Division Docket, pp. 6-8.

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. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (Emphasis supplied)**

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“That on or prior to January 2011 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court accused Mercedes L. Bajao, as Treasurer, and corporate and responsible officer, of Yoshimoto Pole Construction Phils., Inc. located at Unit 3-B FAF Building, 123 Visayas Avenue, Quezon City, a domestic corporation required by law to file income tax and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay its deficiency internal revenue tax liabilities for taxable year 2002, in the amount of Php1,137,648.15, exclusive of surcharges and penalties, under Assessment No. 38966 issued on April 15, 2008, despite notice and service of said assessment, including prior and post notices and Warrant of Dstraint and/or Levy, without formally protesting against or appealing the same, and formal and final demands made upon it to do so, the latest being in the nature of demand before suit issued on January 31, 2011, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php1,137,648.15. exclusive of surcharges and penalties.”

CONTRARY TO LAW.³

...

The plaintiff attached for the Court’s examination the following supporting documents to the Information:

1. Original Copy of the Resolution dated 16 July 2015, signed by Assistant State Prosecutor Christine T. Perolino, with recommending approval of Senior Assistant State Prosecutor Susan F. Dacanay, Chairperson of the DOJ Task on Bureau of Internal Revenue (**BIR**) Cases, and approved by General Prosecutor Claro A. Arellano;⁴
2. Certified Xerox Copies of National Prosecution Service (**NPS**) Hearing Forms/Minutes dated 06 February 2014⁵, 27 February 2014⁶, and 20 March 2014⁷;
3. Original Copy of the Complaint-Affidavit dated 26 November 2013⁸ by Revenue Officer (**RO**) Noel C. Marcellano (**Marcellano**), Jesusa R. Miñano (**Miñano**) of the Collection Section of Revenue Region No. 7 - Quezon

³ Emphasis in the original text.

⁴ Division Docket, pp. 10-15.

⁵ Id., pp. 26-27 and 33-34.

⁶ Id., pp. 19-20.

⁷ Id., pp. 16-17.

⁸ Id., pp. 40-46.

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City, and Alvin N. Sto. Domingo (**Sto. Domingo**) of BIR's Legal Division, with attached Annexes "A" to "O".⁹

4. Original Copy of the Counter-Affidavit dated 06 February 2014 by Tito Herminio F. Diño (**Diño**), YPCPI's authorized representative, with an original of YPCPI's Board Resolution No. 2 Series of 2014 accompanied by a "Certification of Board Resolution by Corporate Secretary" signed by its Corporate Secretary, Mercedes L. Bajao, dated 06 February 2014 attached as Annex "1" and a photocopy of Certificate of Death of YPCPI's former President Florante A. Galinato attached as Annex "2".¹⁰
5. Original Copy of Complainant BIR's "Reply with Manifestation" dated 19 February 2014, with YPCPI's General Information Sheet attached as Annex "P", charging Mercedes L. Bajao, in her capacity as YPCPI's Treasurer, in place of the deceased respondent Florante A. Galinato;¹¹
6. Original Copy of the Rejoinder Affidavit dated 20 March 2014 of Diño;¹²
7. Certified Xerox Copy of the Subpoena dated 15 January 2014 issued to respondent Florante A. Galinato;¹³
8. Certified Xerox Copy of the Subpoena dated 16 January 2014 issued to complainants Marcellano, Fernandez, Miñano, Sto. Domingo;¹⁴
9. Original Copy of the NPS Investigation Data Form dated 28 November 2013;¹⁵
10. Original Copy of the Referral Letter dated 26 November 2013 of then BIR Commissioner Kim S. Jacinto-Henares, addressed to then Secretary of Justice Leila M. De Lima;¹⁶

⁹ Id., pp. 47-63.

¹⁰ Id., pp. 28-32.

¹¹ Id., pp. 21-25.

¹² Id., p. 18.

¹³ Id., p. 35.

¹⁴ Id., p. 36.

¹⁵ Id., p. 37.

¹⁶ Id., pp. 38-39.

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In a Resolution dated 02 November 2015¹⁷, the Second Division found probable cause and ordered the issuance of a Warrant of Arrest against Bajao. It also fixed the bail bond for her provisional liberty in the amount of ₱30,000.00.

As the accused had not been apprehended after the lapse of approximately seven (7) months, the Second Division issued an Alias Warrant of Arrest¹⁸ on 03 June 2016. Even after a considerable period, accused remained at large. Hence, the instant case was archived, subject to revival upon the arrest of accused.¹⁹

In the meantime, following the reorganization of the different divisions of the Court, the case was transferred to the First Division.²⁰ In an effort to speedily dispose the cases and to de-clog court dockets, an inventory of archived cases was made thereafter.

After a second, hard look and thorough consideration of the allegations in the Information²¹, and personal evaluation of the supporting documents²² submitted, this Court, however, finds that **the 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.²³

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*²⁴ (**Lim**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period:

¹⁷ Id., p. 65-68.

¹⁸ Id., p. 79.

¹⁹ Id., p. 82.

²⁰ Id., p. 83.

²¹ Supra at note 1.

²² Supra at notes 4-16.

²³ *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

²⁴ G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

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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 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.**

...

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*²⁵, where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, viz:

...

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, the records show that the pertinent Formal Letter of Demand²⁶ (FLD) and Final Assessment Notice²⁷ (FLD/FAN) with attached Details of Discrepancies²⁸, both dated **15 April 2008**, were issued to the accused on the same day.²⁹ The FLD indicated that the deficiency taxes should be paid on or before 16 May 2008.

²⁵ G.R. No. 127777, 01 October 1999; Citations omitted, emphasis supplied and italics in the original text.

²⁶ Annex "K", Division Docket, p. 59.

²⁷ Annex "J", id., p. 58.

²⁸ Id., p. 60.

²⁹ Paragraph 6.10; supra at note 8, p. 43.

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As alleged in the Complaint-Affidavit³⁰, despite receipt of the FLD/FAN, accused failed to timely file a valid protest to the FAN in accordance with Section 228³¹ of the NIRC of 1997, as amended, as implemented by Revenue Regulations (RR) No. 12-99.³² Thus, the FAN became final and unappealable on **16 May 2008** (the next working day after the 30-day deadline on 15 May 2008, for filing a protest against the FLDs and FANs), and on such date, the offense is "committed" for purposes of the five (5)-year prescriptive period.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

...
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.³³

...

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the **commission** of the violation of

³⁰ Paragraph 6.11; *id.*

³¹ **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

...
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ...

³² Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

³³ Emphasis supplied and italics in the original text.

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the law, or if the same be not known at the time, from the **discovery** thereof 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.

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.³⁴ The second paragraph of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the third paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In the case of *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years:

...

Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**

...

³⁴ *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

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The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.**

...

Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.³⁵

...

The Court *En Banc* also recently applied *Lim* in *People of the Philippines v. Ulysses Falconet Consebido*.³⁶ In that case, the Complaint-Affidavit subject thereof was filed with the Department of Justice (DOJ) on 30 January 2014; hence, the five (5)-year prescriptive period ended on 30 January 2019. However, the pertinent Informations were filed with this Court only on 18 March 2019. The Court *En Banc* thus ruled:

...

As explained in the *Lim* case, while tax cases are practically imprescriptible, such doctrine only applies for as long as the **"period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years"**. Conversely, where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed. As discussed earlier, considering that in the instant case, the period from the filing of the preliminary investigation with the DOJ up to the filing of the *Informations* before the Court in Division exceeded five (5) years, petitioner is barred from instituting the subject tax cases against respondent.

³⁵ Supra at note 24; Citation omitted, italics in the original text and emphasis supplied.

³⁶ CTA EB Crim. 076, 27 January 2021.

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Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA Crim. Case Nos. 0-700, 0-702 and 0-703 on the ground of prescription.³⁷

...

Plaintiff had five (5) years from 16 May 2008 (*i.e.*, the day after the deadline for filing a protest against the FLDs and FANs), or until **15 May 2013**, within which to file the Information in court. Since the subject Information was filed only on **19 October 2015**, the criminal action had already been *prescribed for two (2) years, five (5) months and seventeen (17) days* from **15 May 2013** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

...

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 by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription.³⁸

...

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

³⁷ Emphasis, italics and underscoring in the original text.

³⁸ Emphasis supplied and italics in the original text.

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To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.³⁹

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.⁴⁰

Again, given that the subject Information⁴¹ was filed only on **19 October 2015**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **15 May 2013**, plaintiff's right to initiate this case against the named accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.⁴² Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information⁴³ within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.⁴⁴ Here, the circumstances show that the crime has

³⁹ See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.

⁴⁰ *Id.*

⁴¹ *Supra* at note 1.

⁴² *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

⁴³ *Supra* at note 1.

⁴⁴ *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

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prescribed resulting in extinguishment of accused's criminal liability, if any.

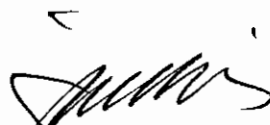
WHEREFORE, in light of the foregoing considerations, CTA Criminal Case No. O-538 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.



ROMAN G. DEL ROSARIO

Associate Justice



JEAN MARIE A. BACORRO-VILLENA

Associate Justice

ON OFFICIAL BUSINESS

LANEE S. CUI-DAVID

Associate Justice